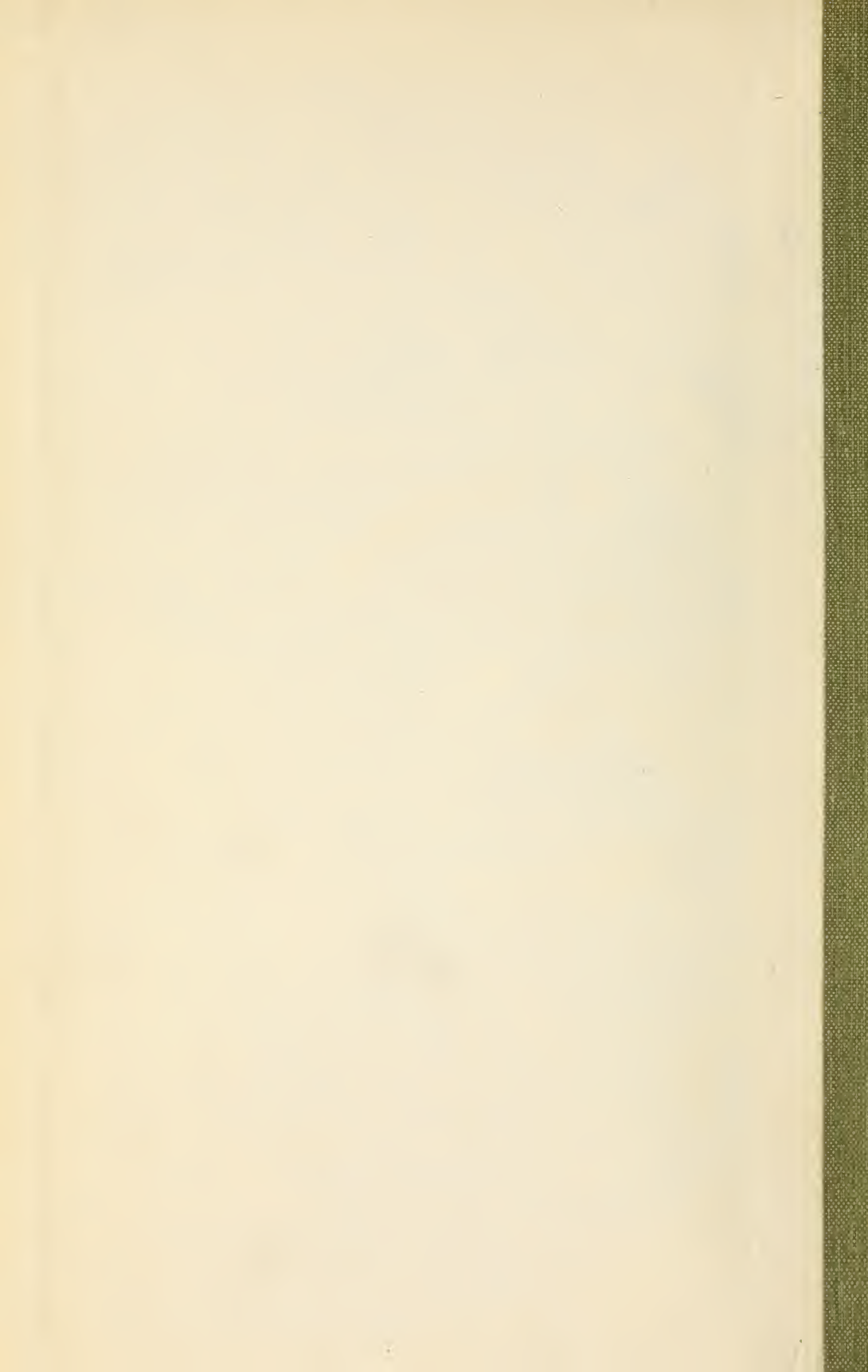


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Board of

THE BOARD
OF
RAILWAY COMMISSIONERS
FOR CANADA

JUDGMENTS, ETC.

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THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

INDEX TO VOL. No. XXI

OF

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Application of the Consumers Glass Company, Limited, Montreal, Que., for reduction in rates on glass bottles and jars, in carloads, Montreal, Que., to points in Canada.

File No. 490.3.

BY THE BOARD:

1

At sittings of the Board held in Montreal on May 12, 1927, there was heard the application of the Consumers Glass Company, Limited, Montreal, *re* rates on bottles and jars, in carloads, from Montreal to points in Ontario, Toronto and west. That application was for an adjustment in rates on an equitable basis to enable the applicant to compete with bottles and jars imported from the United States and other countries. By Judgment of the Board dated February 29, 1928, the report of the Board's Chief Traffic Officer was adopted as the judgment of the Board in that case and the application was refused for the reasons very fully set out in the judgment, Volume 17, Board's Judgments and Orders, page 726 *et seq.*

On February 7, 1929, the Consumers Glass Company launched a further application under the provisions of section 317 of the Railway Act for a reduction in the rates on glass bottles and jars, in carloads, from Montreal to points in Canada. This application, while in many respects similar to the previous application, was broader in scope and raised certain issues not embraced in the former application. The first application sought an adjustment in rates to a limited territory, namely, points in Ontario, Toronto and west. The present application is for a reduction in rates from Montreal to all points in Canada; further involving comparison with the commodity rates on newsprint paper which was not covered in the first application. Exhibits accompanying the present application also covered rates not previously on the record. In view of the extension of the application and the new issues raised, the Board decided to permit the present application to be proceeded with. This application was heard at sittings of the Board in Montreal on November 5, 1929.

2

The applicant sets out that in the marketing of its products it is in competition with other Canadian manufacturers as well as manufacturers in the United States and England. The competition from other countries need not be

dealt with, Mr. Jones, President of the applicant company, stating at page 4167 of the evidence (Volume 550):—

“I would not take up your time with anything but the United States and England, because they are the two large exporting countries; the others are very small.”

The essence of the complaint is an alleged unjust discrimination against the applicant and an undue preference in favour of United States and English competitors in the rates now current from Montreal to various points in Canada. It is not contended, nor was evidence adduced to show that the rates now in force from Montreal are unreasonable *per se*; they are attacked solely from the standpoint of unjust discrimination.

The submissions made and evidence given supporting the allegation of unjust discrimination were largely in the form of rate comparisons indicating inequalities and apparent discrepancies in the rates from Montreal to points in Canada as contrasted with certain other rates for hauls of similar distance, and more particularly the import rates from Canadian ports and international rates from United States points of origin to Canadian destinations. Section 317 of the Railway Act, under which this application is launched, so far as is relevant to the issues here, provides that:—

“The Board may determine, as questions of fact, whether or not traffic is, or has been, carried under substantially similar circumstances and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage within the meaning of this Act.”

A difference in rates may be discrimination, but not unjust discrimination of the character forbidden by the Railway Act. The interpretation of the Act in this respect, and the position taken by the Board on the broad issue of unjust discrimination, has been set out in a great many decisions of the Board and may be summed up by the following citations from two or three cases, which position has been uniformly followed in all other cases coming before the Board.

The late Chief Commissioner, Hon. Mr. Mabey, in *Toronto and Brampton vs. Grand Trunk Railway and Canadian Pacific Railway Companies*, 11 C.R.C., 370, stated:—

“The Railway Act, as I understand it, authorizes and justifies discrimination. It is only an undue, unfair, or unjust discrimination that the law is aimed against.”

In 18 C.R.C., 424, *Cunco Fruit and Importing Company vs. Grand Trunk Railway*, it is stated:—

“Discrimination may or may not fall within the provisions of the Act. The Act, as it has always been interpreted by the Board, only forbids discrimination when it is undue or unreasonable. In *re Western Tolls*, 17 C.R.C., 123, pages 148 to 156.”

In Volume 12, Board's Judgments and Orders, *re Freight Tolls 1922*, it is set out at page 73:—

“Mere mileage comparisons do not afford criteria of discrimination, but all facts material must be given weight. In other words, under the body of regulation which is developed under the Railway Act, mileage is not a rigid yardstick of discrimination; discrimination, in the sense in which it is forbidden by the Railway Act, is a matter of fact to be determined by the Board.”

In the matter of complaint of W. B. Plaunt *et al*, *re* rates on pulpwood from shipping points in Canada to Johnsonburg, Pa., Volume 18, Board's Judgments and Orders, at page 457, the Board stated:—

"A mere comparison of distances without consideration of the peculiar circumstances affecting the traffic is not the final criterion of discrimination."

From the above, and many other cases not quoted, the position is that the question of whether unjust discrimination in rates exists is a matter to be dealt with in the light of the particular facts and the various circumstances found to exist in each case.

In the former application for an adjustment in the rates from Montreal, it was not set out specifically what rates were alleged to be required. In the present application, a reduction of approximately 25 per cent in the rates from Montreal to all Canadian points is applied for.

The alleged unjust discrimination in rates falls under the following headings:—

3

COMPARISON WITH RATES BETWEEN CANADIAN POINTS; ALSO SOME UNITED STATES POINTS

From Montreal, as well as other Eastern Canadian manufacturing points of these glass bottles and jars, namely, Hamilton and Wallaceburg, the regular 5th class rates governed by the Canadian Freight Classification are applied, there being no lower commodity rates in effect except in the case of Pacific coast destinations in British Columbia to which there are special competitive commodity rates published to meet water competition. No discrimination against Montreal, and in favour of Wallaceburg and Hamilton, is alleged, nor, obviously, could there well be, since they are all on the class rate basis except as to the competitive rates to the Pacific Coast as to which they are also on the same basis. In Western Canada there are glass bottle manufacturing plants located at Winnipeg and Redcliff, from which the class rates are also applied with a similar exception as to competitive commodity rates to the Pacific Coast. At the time this application was launched, there were some commodity rates in force in Western Canada applying on empty second hand bottles between specific points; also on new bottles from Redcliff to a limited number of points. These rates are shown in exhibits "C", "D", "H", "I", "J", "K", "L" and "M", filed by the applicant. All of the rates shown in these exhibits were cancelled in May, 1929, except the competitive rate from Redcliff to British Columbia coast points above alluded to, which is shown in exhibit "J".

Applicant's exhibits "E", "F" and "G" showed commodity rates on empty second hand bottles from Eastern United States terminals (Duluth, Saint Paul, Minneapolis, etc.) to Winnipeg, also on glass milk bottles and tumblers, pressed or machine made, from the same points to Calgary. The commodity rates on the empty second hand bottles to Winnipeg were cancelled, effective April 29, 1929. The commodity rates on glass milk bottles, as well as on tumblers, to Calgary only, shown as issued to meet competition or as proportional rates on shipments originating beyond the origin points here named, are still in effect, but there is no evidence here of unjust discrimination against the applicant. The record does not show whether applicant manufactures these tumblers, but in any event the rate is shown as competitive and not applicable from or to intermediate points in Canada and, therefore, not a proper measure of comparison for the purpose of showing unjust discrimination. The rates on the milk bottles are also shown as issued to meet competition, or as proportional rates, but as the applicant does not manufacture milk bottles (page 4188 of the evid-

ence) there is no unjust discrimination shown. The rates here referred to, applying to Calgary only, were published to equalize on traffic originating at the origin points named, the combination of rates available by using the rate from point of origin to Sweetgrass on the international boundary plus the regular 5th class rate from the latter point to Calgary.

It was contended by applicant that the existence of the former commodity rates between a limited number of Western Canadian points as shown in the exhibits above named, and the subsequent cancellation of same by the railways, was an admission of discrimination with respect thereto. The railways do not admit there was any discrimination against the applicant under the rates in question. The circumstances surrounding their establishment and subsequent cancellation were not developed, and it is unnecessary to deal with this point as the rates no longer exist, having been replaced by the class rates against which there is no complaint.

Exhibit "B" shows the rates proposed by applicant on glass bottles and jars, in carloads, from Montreal to points in Canada, and it is stated these are on the same relative basis as commodity rates now in effect between points in Canada on newsprint paper, wrapping paper, etc.; that all these commodities are classified 5th class in the Canadian Freight Classification and if paper is entitled to commodity rates there is no reason why bottles and jars should not also be given the same basis of rates. It was stated the price of newsprint paper would be about the same as bottles, but no specific figures are on record as to the values of any of these articles, or the comparative volume of movement. Beyond pointing out that the commodities take the same classification rating, no evidence was given showing why the commodity rates established on newsprint paper should be the measure of the rates on glass bottles and jars. There are only, approximately, a half dozen classes of carload ratings provided in the classification into which all the hundreds of different articles transported are placed. It is so well known and recognized, both in Canada and the United States, that different articles having the same carload classification rating, and which do not in any way compete with each other, may be, and are provided with commodity rates on quite dissimilar bases, and that this does not create unjust discrimination in rates, that it would seem unnecessary to comment at much length on this phase of the applicant's submission. The same point was raised in the previous application, and in its judgment, *supra*, the Board stated at page 731:—

"Applicant filed exhibit 'B,' showing a few articles also classifying 5th class, in carloads, on which commodity rates lower than the class rate are in force between Canadian points. This exhibit has no probative force so far as relates to the issue here, as the commodities shown therein do not in any way compete with those of the applicant, and it does not follow that there is any discrimination merely because the rates are different. With regard to practically every article that is accorded special commodity rates, a different set of circumstances and conditions prevails; one case can seldom be an exact precedent for another. Each traffic situation presents points of difference, and the particular facts, circumstances and conditions existing in each case must be considered, and the rates established based thereon. The result is that while the articles may all take the same classification rating, the commodity rates thereon may have a range of anywhere from 60 to 90 per cent of the class rate, and yet this situation does not result in discrimination of the character prohibited by the Railway Act."

The same point has been dealt with and disposed of in various judgments of the Board, for example:—

9 C.R.C., p. 232, at p. 240, Montreal Produce Merchants' Association vs. Grand Trunk and Canadian Pacific Railway Companies.

22 C.R.C., p. 125, at p. 132, Dominion Millers Association vs. Canadian Freight Association.

23 C.R.C., p. 132, at p. 136, Crushed Stone, Limited, vs. Grand Trunk Railway Company.

Volume 15, Board's Judgments and Orders, Approval of Canadian Freight Classification No. 17, Section XVII, p. 198; Section XXVII, p. 215.

Exhibit "Q" shows certain low commodity rates on bituminous coal, feldspar, lime and soda ash between specific Canadian points, also between certain United States points. Exhibit "T" shows commodity rates on glass bottles, in carloads, mileages, and rate per ton per mile from points of origin in United States to New York as compared with rates from Montreal to points of destination in Canada for similar distances. Witness for applicant did not in evidence develop clearly what it was intended to prove by these rates as demonstrating unjust discrimination in the rates on glass bottles from Montreal, except that with regard to exhibit "T" it was pointed out that the ton mile rate for the movement within the United States was considerably less than the ton mile rate for movements of similar distance within Canada. It is a matter of general knowledge that for a movement from Chicago and other points named to New York, the traffic passes through one of the territories of greatest traffic density in the United States. A comparison for such movement with the movement from, say Montreal to Sault Ste. Marie, Fort William, etc., as shown, is not helpful as indicating that the rates for the movements last named are unjustly discriminatory. This was apparently recognized by Counsel for applicant in his statement (page 4179):—

"I fancy you would not be prepared to attach much importance to them unless they were accompanied by very direct evidence as to density of traffic and so forth."

What was stated by the Board in its judgment on the previous application, *supra*, page 731, is here pertinent:—

"Exhibit 'C,' also filed by applicant, showed that from Dunkirk and Lockport, N.Y., to some half-dozen United States destination points, commodity rates are in effect on glass bottles in carloads. No information is on the record as to the circumstances and conditions surrounding the establishment of these rates, and it is, of course, obvious and has been so stated in various judgments of the Board, that rates established between two points in the United States are no criteria of reasonableness of rates between points in Canada."

See also citations from Board's Judgments quoted on pages 732 and 733.

Reference was made to the movement of empty second-hand bottles between Canadian points. These compete with new bottles to the extent that if all bottles were used once only, more new bottles would be required. Witness for applicant stated this was becoming a trade of considerable volume, further stating there is no reason why such bottles should not be used again. The rate charged on these second-hand bottles is 5th class, the same as on new bottles, but the carload of minimum weight on the latter is 30,000 pounds while the second-hand bottles may be shipped at a reduced carload minimum weight of 18,000 pounds, and if carried at such weight the carload earning to the carrier is considerably less than obtained on a carload of new bottles. It was pointed out that it costs just as much to haul a second-hand bottle as a new one so that the result is that for a similar transportation service a lesser

earning is obtained on the second-hand bottle than on the new one. This is subject to the qualification that the weight carried in the one case is greater than in the other, and if the same weight was carried the earning would be the same. Even with an article without any variation in the carload minimum weight, there may be a similar discrepancy. One shipper may load only to the minimum weight, while another may load ten or fifteen thousand pounds in excess of the minimum weight, and the carload earning in the latter case is considerably greater than in the former, and instances of this kind are of every day occurrence.

Mr. Ransom, for the carriers, stated the breweries had pointed out that they had a large capital investment tied up in these bottles all over the country, and a reduced carload minimum weight for the return movement thereof would enable them to obtain much quicker return than if held until a greater minimum weight was collected, and the arrangement had been established at the time the classification was thoroughly revised, namely, in Classification No. 17, when many of the less than carload ratings on returned empties were increased, although still lower than when the same containers are shipped new.

A similar situation to that here referred to exists with respect to numerous other carriers or containers, such as bags, barrels, kegs, drums, boxes, cans, carboys, crates, cylinders, etc., *i.e.*, these articles, second-hand, empty, returned, are given a lower rating than when shipped new, or in other words, for a similar transportation service the earning is less in the one case than in the other. This condition has existed since long before the creation of this Board, has never been brought in issue from the standpoint of unjust discrimination, and the arrangement was approved by the Board when Classification No. 17 was before it for approval, Volume 15, Board's Judgments and Orders, *Re* proposed Canadian Freight Classification No. 17, Sections XX and XXI, pages 203-205. It is not a matter of record as to how the values compare in the case of the new container and the same article when returned second-hand.

The same principle exists with respect to other descriptions of traffic such as agricultural implements and parts thereof returned for remanufacture; on field and garden seeds returned to shipper; also on old magazines and newspapers, reduced commodity rates being established to cover such movements which are lower than governing on the same articles when originally shipped from the manufacturer.

It would seem quite obvious that where containers such as above described, used in the outbound transportation of various commodities, are capable of being returned and again used, this is a proper and economical arrangement to which the manufacturer of such containers can hardly reasonably take exception. If this were not done, the cost of the commodity to the consumer would, undoubtedly, be considerably greater in many instances, because in some cases the cost of the container is nearly, if not equal to the cost of the commodity placed therein, and if such container were used once only it would result in an increase to the consumer in the price of the commodity. There are some cases where the value of the container is very much greater than the commodity shipped therein. For example, in the case of *Blaugas Company vs. the Canadian Freight Association*, 12 C.R.C., p. 303, at p. 314, it was shown that the value of each containing cylinder was six times the value of the goods carried in it.

Speaking of the maintenance of lower ratings on old than on new shipping containers, the Interstate Commerce Commission, in *Associated General Contractors v. A.T. and S.F. Railway Company*, 144 I.C.C., 305, said:—

"Generally speaking, such articles have a low initial cost, and a scale of rates which will induce their return and reuse and prevent their wastage results to that extent in a conservation of natural resources and promotion of the general welfare."

Although this arrangement covering returned empty carriers has been in force for at least some forty years without complaint, if the manufacturers of new containers desire to make formal complaint against it with a view to having the rates on this traffic increased to the same basis as governing on new containers on the ground that such reduced rating is unreasonable, or unjustly discriminatory, it is open to them to do so, but that specific issue is not here involved and does not require consideration on this record. Applicant went no further here than to point to the differences as suggesting that if the carriers obtained a certain earning on the second-hand bottles it might be reasonable to obtain no greater earning on the new bottles. It does not follow that because a reduced rating is established on the second-hand container to assist its movement and develop a traffic therein, this is the measure of reasonableness of the rates on the containers when shipped new, particularly where the ratings on the latter have been considered by the Board and approved as being reasonable. There is no complaint against the carload minimum weight provided for new bottles, nor is it clearly shown that the lower minimum weight on the old bottles is detrimental to the applicant. The questions of the Deputy Chief Commissioner and the answers of the president of the applicant company at page 4187 are self-explanatory:—

“The DEPUTY CHIEF: But in respect of the point raised by Mr. Boyce, the return of the empties, is the fact that you have 30,000 hurting your industry?—A. No.

“Q. Therefore the fact that they have an 18,000 minimum does not enter into the conflict, because you ship in carloads, you do not ship any I.C.L.?—A. Sometimes, but not very often.

“Q. So the 30,000 pound minimum does not interfere with your trade?—A. No sir, except that I am not in favour of reducing that minimum, but they are accepting the 18,000; it is hurting us to some extent, because we are competing with empty bottles. If they put the same amount, our competition would not be so keen. It affects our output, I think.

“Q. Therefore the remedy would be for you to make an application against the 18,000-pound minimum now in force. But there is no such application before us.—A. My argument on that is that if the railways in Canada can afford to get just so much money for that service, they can haul our new bottles at so much per car.”

Reference was also made to the rates applying on tin cans which for some purposes, it is stated, compete with glass bottles or jars, and the same point made, namely, that the revenue for hauling a carload of tin cans is less than for a carload of glass bottles or jars. When asked the difference in value between a carload of tin cans and a carload of glass bottles or jars, witness for applicant stated he could not answer that question, and this information is not on the record. There is no difference in the rates, but only in the minimum carload weight. With the exception of a few commodity rates on tin cans, established to meet a special condition, these articles all pay 5th class rates, the difference in their carriage being that a lower carload minimum weight is provided for the tin cans than for the bottles and jars. The carload minimum weight on the latter is 30,000 pounds, against which there is no complaint as this weight can easily be loaded. Exhibit “S,” filed by applicant, shows they load their cars to an average weight of approximately 40,000 pounds, or 10,000 pounds in excess of the minimum. On the other hand, the carload minimum weight on tin cans is 17,000 pounds which is, on the average, approximately 3,000 pounds greater weight than can be loaded in the car. See Volume 15. Board’s Judgments and Orders, *re* proposed Canadian Freight Classification No. 17, Section XI, at p. 235 and p. 237. Mr. Ransom made a general statement

to the effect that the proportion of glass containers used by the canners was increasing from year to year. The remarks made elsewhere herein deal with the matter of variation in the per car earning. The submission of applicant does not specifically allege that the rates on tin cans result in unjust discrimination against them, so that it is unnecessary to express any opinion on this point, and in any event, that could not be done on this record because the matter was not developed from that standpoint.

We do not consider it is necessary here to make any extended comment on the point raised by applicant, not only with respect to the rates here referred to, but also with regard to import rates and international rates which are later dealt with herein; that there is unjust discrimination if it is found, as it is, that the carriers, for similar transportation service, obtain greater revenue in some cases than in others. This is a subject concerning which a great deal could be said. It is a general condition throughout the rate structure in any country in the world, and it is just as much in the interest of the shipping public, and necessary to the development of business, as it is to the interest of the carriers to enable them to develop and encourage the free movement of commodities. In this respect the transportation companies are in much the same position as the shipper, as the latter is also compelled, with a fixed cost of producing an article, to accept a lower price for it in certain territories than in others. The applicant is no exception to the rule, its president stating (p. 4170) they are selling their product in Vancouver at a price as low or lower than in Montreal; further stating (p. 4171): "If you accuse me of selling to the Vancouver man at less than f.o.b. Montreal, I am guilty." He stated the same condition would prevail with regard to goods exported to other countries (p. 4172). The whole rate structure is honeycombed with rates that are an exception to any principle of equality in earning for a similar transportation service. This condition has always existed, has been recognized and approved by all rate regulating tribunals, and is not contrary to law. Without such a condition, the business of the country could not develop and flourish. These variations in rates are necessary to develop traffic, to enable its free movement, and to meet market, water and rail competition. There is also the feature of the value of the service. The actual difference in the cost of the movement of a carload of silk and a carload of coal is relatively insignificant compared with the difference in the value of the two carloads, and under any theory of the same revenue for a similar transportation service, the rate on coal would be prohibitive whereas the silk would not contribute its fair share to the carrier's revenue.

While applicant made no reference thereto in its submissions on this point, it is observed that a striking illustration of variation in rate for the same transportation service is furnished in exhibit "G" filed by applicant. This shows that from Duluth, Minneapolis and St. Paul, Minn., to Calgary, Alta., in tariffs filed with both the Interstate Commerce Commission and this Board, there are four rates published on the identical commodity and the carload minimum weight is the same in all cases, namely, glass milk bottles, minimum weight 30,000 pounds, the four different rates between exactly the same points for identical transportation service being:—

\$1.12	on shipments originating at	Clarksburg, W. Va.
\$1.12½	"	" " Poteau, Okla.
\$1.14½	"	" " Parkersburg, W. Va.
\$1.35½	"	" " Streator, Ill.

The rates from St. Paul, etc., are proportional rates, as the traffic originates at points beyond as indicated. The reason for the variation in the proportional rates is that the rates from these points to Calgary are published to equalize, on traffic originating at the origin points named, the combination of rates available by using the rate from point of origin to Sweetgrass on the international boundary, plus the regular 5th class rate from the latter point to Calgary.

Of course, throughout all this there must not be a difference in rates which results in an unjust discrimination, and the Railway Act distinctly stipulates this. As already stated herein, it is the duty of the Board to determine, on the facts and circumstances developed in each individual complaint, whether or not unjust discrimination does exist, and if it does, this condition must be remedied.

4

COMPARISON WITH IMPORT RATES FROM CANADIAN PORTS

The contention of applicant under this heading is that the railways are charging the Canadian manufacturer of glass bottles and jars, higher rates than they are accepting on the same articles from the Canadian ports when imported from England or European countries, and that this constitutes unjust discrimination against the applicant.

Applicant confined its evidence concerning these import rates to destinations in Western Canada, and to competition from England, it being stated the importation from other countries was very small, except from the United States, which is separately dealt with herein. Exhibit "P", filed by the applicant, shows for a period of years, the importation of glass carboys or demijohns, bottles, n.o.p., decanters, flasks, jars and phials, from the United Kingdom. This exhibit does not show quantities, the amount being expressed in dollars, namely:—

1921..	\$	32,482
1922..		19,424
1923..		30,007
1924..		36,793
1925..		47,206
1926..		113,873
1927..		100,856
1928..		98,986

Applicant stated these figures being taken from Government statistics under the heading indicated, included "a lot of glass that is not made in Canada." The same exhibit showed importation from all countries amounting in the year 1928 to \$1,485,205, and applicant stated that of the latter figure, not more than 50 per cent is of a class or kind made in Canada. Whether this estimated percentage fairly represents, with respect to the English importation, the products actually competing with applicant, is not made clear. The total importation from England represents slightly less than 7 per cent of the total importation from all countries.

Beyond giving the import figures from England, expressed in dollars, with nothing on the record enabling any opinion to be formed as to the quantities, or what proportion represents products actually competing with applicant, no evidence was submitted by applicant bearing on actual movements under these import rates. In addition, no evidence was submitted that would show that applicant is subjected to any detriment by the import rates prevailing.

Reference was made to competition at Vancouver and Victoria. The movement from England to these points is via all water routes, and not concerned with any question of import rates maintained by Canadian rail carriers. To assist the Eastern Canadian manufacturer in meeting this particular competition, there is in effect a special competitive commodity rate on glass bottles and jars, in carloads, from Montreal to Vancouver and Victoria, of \$1.35 per 100 pounds. This is a very low rate, considerably lower than applicable to intermediate points, and seems recognized as such by applicant, as, in exhibit "B", showing the rates applied for, applicant shows the rates proposed from Montreal to Vancouver and Victoria as \$1.35, which is the same figure as the special competitive rate now in force.

It seems fairly clear from the record that the volume of products competing with applicant, imported from England, as compared with the output of all the Canadian manufacturers, concerning which, such information as is on the record is given in another portion hereof, is relatively so very small as to be practically negligible. In a letter to the Board giving information as to the cost of loading import bottles at Montreal wharf, the Canadian Pacific Railway stated they only handled two carloads of import bottles by their line from Montreal to Western Canada during the whole season of navigation, 1928, and up to November 9, 1929.

Commenting very briefly on the broad question of import or export rates lower than the domestic rates, it may be stated that the rate structure has always recognized such a condition, and the Board has also approved of it as being, under certain circumstances, a proper one, not contrary to the provisions of the Railway Act. In many decisions of the Board, the carriers have been required to establish import and export rates lower than governing when the same traffic is moving locally between the same points in Canada, and the Board has stated, in many decisions, that an import rate is in no sense a necessary measure of the reasonableness of the domestic rate, or proving that unjust discrimination exists. Such rates are but proportions of through tolls governing on the traffic from point of origin to final destination. Further, import, as well as export, traffic is subject to port competition, and from Canadian ports it is necessary for the Canadian carriers, in order to participate in the movement of the traffic and attract it through the Canadian ports, to establish rates to meet the competition through United States ports.

Applicant filed exhibit "N" showing through rates published on glass bottles from Belfast, Bordeaux, Bremen, Bristol, Cardiff, Glasgow, Liverpool, London, etc., to certain destinations in Western Canada, *i.e.* Port Arthur and west thereof, and contended that such rates had the effect of providing commodity rates, representing a considerable reduction from the 5th class rate, for that portion of the haul from Montreal to destination, covered by these through import rates. The carriers, on the other hand, asserted that they received as their proportion of these through rates, the 5th class rate from Montreal to destination. Winnipeg was taken as a typical destination point in the discussion which took place at the hearing. The 5th class rate applying on glass bottles from Montreal to Winnipeg is \$1.14 per 100 pounds. The through rate published from European ports to Winnipeg is \$1.36 per 100 pounds (the all-rail rates are given in both cases). The controversy between the opposing parties on this point arises by reason of certain absorptions made by the railways out of the inland proportion of the through rate. Applicant stated (p.4160) that the rail carrier's proportion of the through rate represented about 85 per cent of the 5th class rate, which would be 97 cents. At page 4163, applicant stated the railways obtained about \$1 for their proportion. Another computation of applicant, shown below, shows \$1.01½ as the proportion received by the rail carrier, this figure being arrived at as follows: Applicant stated it was advised that the ocean rate on bottles, in carloads, from the United Kingdom to Montreal is 27.2 cents per 100 pounds; that the railways absorb the wharfage charge of 20 cents per ton; the cost of loading the cars, estimated at 5 cents per 100 pounds; and the Harbour Commissioners switching charge of \$4 per car, which, based on carload minimum weight of 30,000 pounds, would be 1.3 cents per 100 pounds. These charges total 34.5 cents, made up as follows:

Ocean rate.. . . .	27.2 cents
Wharfage.. . . .	1 cent
Loading.. . . .	5 cents
Harbour Commissioners Switching.. . . .	1.3 cents
Total.. . . .	<u>34.5 cents</u>

As the through rate is \$1.36, this leaves \$1.01½ as the rail carrier's proportion.

The general basis of construction of the through rates in the tariff in question, and which is still in effect, was developed by the Board in the complaint of the Manitoba Government Liquor Control Commission and others, *re* through import rates from European ports to Western Canada, Volume 14, Board's Judgments and Orders, page 303, and is clearly set out therein as follows:—

“Rates published in the tariff in question are constructed on a combination of the ocean line proportion, plus the local domestic rates from Montreal, or as applicable from the port of Baltimore through Chicago and St. Paul if lower; and the through rates so arrived at are also made applicable via Quebec and the ports of Saint John, West Saint John and Halifax and Portland.

The ocean factor entering into the through rate is described as the ocean line proportion. This is not the actual ocean rate; but, according to the submissions made, it represents a reduction of approximately 20 per cent. It has appeared to be necessary to strike an average ocean proportion in order to enable the publication of a through rate; and, as a result, it occasionally happens that on account of the method of packing or variation in relative weight and measurement of the same commodity under different conditions, the actual ocean rate, plus the actual rail rate from point of discharge to destination produces a lower through combination than the through commodity rate.”

From the foregoing it is apparent that the actual, or local, ocean rate of 27·2 cents from the United Kingdom to Montreal is not necessarily the “ocean line proportion” of the through rate. The specific figure representing the ocean line proportion in this case is not on record, but it may be noted that 80 per cent of 27·2 cents would be 21·76 cents, and adding to the latter figure the 5th class rate of \$1.14 it produces 135·76 cents and the through rate published is 136 cents.

The figures given by applicant as representing the absorption made by the railways, require some modification. The wharfage charges of 20 cents per net ton is taken care of jointly by the ocean and rail carriers on a 50 per cent basis, so that the railway absorption covering wharfage is ·5 cents per 100 pounds. The Canadian Pacific Railway advises they only handled two car-loads of import bottles from Montreal to Western Canada during the season of navigation 1928 and up to November 9, 1929. The weight on one car was 41,400 pounds and on the other 45,658 pounds, or an average of 43,539 pounds, and the switching charge of the Harbour Commissioners, based on the weight last named, would be equal to ·92 cents per 100 pounds. They state the cost of loading to be 60 cents per net ton, or 3 cents per 100 pounds. To sum up, their absorption out of the 5th class rate of \$1.14 was as follows:—

Wharfage	0·5 cents
Loading	3·0 cents
Harbour Commissioners switching	0·92 cents
	<hr/>
	4·42 cents

Deducting the amount absorbed makes the net rate 109·58 cents as contrasted with applicant's figure of 101·50 cents.

The practice of the Canadian carriers in absorbing terminal charges with respect to import rates, has, as its origin, the same underlying reason as the establishment of the import rates themselves, namely, to meet competition through other ports, and similar absorptions when the traffic moves through United States ports.

As already stated, the general basis for the through rates in question is the combination of the ocean line proportion plus the local domestic rate from Montreal, subject to the rates from the port of Baltimore as maxima. With respect to glass bottles, an investigation of the situation by the Board's Traffic Department indicates that the Canadian carriers do not, as far as relates to the all-rail rates, require to absorb the terminal charges above referred to in order to meet a competitive situation from Baltimore. This feature has been discussed with representatives of the carriers and they are arranging to increase the through rates, all-rail, to the extent of the absorption (the rates will be increased by 5 cents per 100 pounds), and with this amendment to the tariff the applicant's complaint concerning the action of the carriers in making such absorption is disposed of, so far as the all-rail rates are concerned. While the inland rail proportion of the rate is lower than the domestic rate when the traffic moves from Saint John or Halifax, the through rates are made applicable through all these Canadian ports, consequently, the Montreal domestic rate is the controlling factor therein so far as the rail haul is concerned.

With respect to the through lake and rail rates, the inland rail proportion is influenced and controlled by the rates from Baltimore; for example, taking Winnipeg as an illustration, the lake and rail rate Baltimore to Fort William is 48½ cents per 100 pounds, and the 5th class rate from Fort William to Winnipeg is 57 cents, or a total of \$1.05½. The inland rail proportion of the through lake and rail rate is \$1.06, or a ½ cent higher than from Baltimore, and as terminal charges are absorbed at Baltimore, such absorption is also necessary at Montreal on this particular traffic.

It might also be pointed out that the result of establishing the rates proposed by applicant, would be to reduce the import rates to Western Canada. Taking the point used at the hearing as a typical example, namely, Winnipeg, the present domestic rate is \$1.14, which is also the inland rail proportion from that point of the through import rate. A rate of 85½ cents is applied for. The actual ocean rate plus the domestic rate is, of course, the maximum that can be charged on an import shipment so that the import shipment would also receive a corresponding reduction for the inland rail proportion of the haul.

5

COMPARISON WITH INTERNATIONAL RATES

The issue under this heading is the same as involved in applicant's former application, namely, it is alleged that the rates from Montreal to Canadian destinations are unjustly discriminatory against Montreal, and unduly preferential to United States points of origin. While the applicant was allowed to be reheard on this point, the hearing showed, in general, that ground already traversed, was retraversed. The question here involved was very carefully considered previously, and is dealt with at some length in the Board's Judgment, *supra*.

Applicant submitted evidence and exhibits showing that, based on comparison of distance, there are, in numerous cases, rates from United States points to certain Canadian destinations, which are lower than the rates from Montreal for similar distance. In some instances the discrepancy is considerable. This necessitates analysis for the purpose of ascertaining, as far as the record and information before the Board permits, the facts and circumstances surrounding the rates compared, and the movement of traffic thereon, so as to comply with the provisions of section 317 of the Railway Act under which the application is launched, which sets out that "the Board may determine, as questions of fact, whether or not traffic is, or has been, carried under substantially similar circumstances and conditions, and whether there has, in any case, been

unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this Act."

Applicant filed exhibit "A", showing the mileages and rates on glass bottles and jars, in carloads, from Montreal to various Canadian points, and in comparison therewith, the mileages and rates from eleven United States points to the same points. This exhibit was in the form of an enlargement upon exhibit "A" filed by applicant at the former hearing, i.e., it contained more Canadian points, as well as additional United States points. This exhibit has been analyzed. It contains 1,155 rates from United States points. Seven hundred and eleven of the rates are higher from the United States points than from Montreal to the same Canadian points. Two hundred and ninety-six of the rates from United States points are lower than from Montreal, but the mileages from the United States points are also shorter than from Montreal. The rates from United States points and Montreal are the same in ten instances, in seven of which the distance is shorter from the United States points than from Montreal, and in three cases the distance from Montreal is greater. In 138 instances out of the 1,155 rates shown, the rate from the United States point is lower than from Montreal, although the distance from the United States point is greater than from Montreal.

Dealing, first, with the rates compared, to obviate the necessity of reference to the previous judgment to obtain an outline of the situation underlying the differences in the rates to that portion of Canadian territory, where rates from United States points are lower than from Montreal, the following extract therefrom may be repeated:—

"The rates quoted from United States points are the class rates governed by the Official Classification and the United States scale of rates. From Montreal, as well as other Eastern Canadian manufacturing points of these articles, namely Hamilton and Wallaceburg, the regular 5th class tariff rates, governed by the Canadian Freight Classification and the Canadian rate scale, are applied. In the Canadian Freight Classification the ratings range from 1st to 10th class, whereas the international rates are subject to the Consolidated Freight Classification (Official) with ratings provided from 1st to 6th class, and, therefore, there cannot be uniformity in the scaling of the rates in both cases. The Board has not initial jurisdiction over the rates from United States points and, consequently, cannot prescribe, nor will the United States carriers adopt, the use of the Canadian Freight Classification on international traffic, and the remaining alternative, namely, to prescribe on international traffic the use of the Canadian Freight Classification and Canadian rate scale for that portion of the haul within Canada, would result in replacing the joint through rate structure that has always existed by combinations of rates to and from the boundary. Any such proposition would meet with great opposition from Canadian receivers and shippers on account of the substantial increase in rates that would result therefrom. It has to be borne in mind that this international rate structure, subject to the Official Classification, applies from Canada to the United States as well as in the reverse direction; in other words, the same rates apply in both directions. With regard to the Canadian rates here in question, the 5th class approximates 50 per cent of the 1st class. Applicant states that with respect to the rates governed by the Official Classification the 5th class is approximately one-third of the 1st class rate, but a check of some of the rates indicates no strict uniformity and shows 5th class rates ranging from 35 to 40 per cent of the 1st class rate. Aside from these fundamental differences in the two rate structures in question, and while glass bottles and jars are rated 5th class in both the Canadian and Official Classifications, there are many articles provided with a higher

rating in the Official Classification than in the Canadian Classification, and, on the other hand, numerous others where the rating in the Official Classification is lower than in the Canadian.

"The matter of discrepancies in the Canadian rate structure, as compared with the international rate structure, was before the Board in the so-called International Rates Case which was dealt with by order of the Board No. 3258, dated July 6, 1907. There was there involved discrepancies in the east and north-bound freight rates from Canadian points on the St. Clair, Detroit and Niagara River frontiers, as compared with those from the corresponding United States frontier points, namely, Port Huron, Detroit and Buffalo; the Canadian rates being the higher. The Board recognized that the conditions were affected by the existence of companies in the United States independent of those operated in Canada, and that the harmonizing of the rates was a matter of great difficulty. The subject was one that engaged the consideration of the Board, the carriers, and parties in interest, for a considerable length of time, and the final adjustment directed first class rates from the Canadian frontier points which would not be in excess of those from the corresponding United States frontier points. For example, prior to the order above referred to, the first class rate from Detroit to Toronto was 36 cents, and from Windsor to Toronto 40 cents. To Montreal the first class rate from Detroit was 58½ cents, and from Windsor the summer rate was 60 cents and the winter rate 70 cents. The order in question prescribed a first class rate of 36 cents from Windsor to Toronto and 58 cents from Windsor to Montreal. Under these adjustments there were still discrepancies with regard to the lower classes. The rate situation as made effective in 1908, pursuant to the Order referred to, may be illustrated as follows:—

TO TORONTO

	1	2	3	4	5	6	7	8	9	10
Detroit..	36	31	23	16	13	10	Official Classification			
Windsor..	36	32	27	23	18	16	13	14	—	11
Windsor over Detroit.. . . .	—	1	4	7	5	6				

TO MONTREAL

	1	2	3	4	5	6	7	8	9	10
Detroit..	58½	50½	39	27½	23½	19½	Official Classification			
Windsor..	58	51	44	36	29	27	26	24	—	21
Windsor over Detroit.. . . .	—	½	5	8½	5½	7½				
Windsor under Detroit.. . . .	½	—	—	—	—	—				

"By reason of the various increases and reductions in rates made in both the United States and Canada at various times since 1916, the present rate situation as compared with that existing in 1908, given above, is set out below:—

TO TORONTO

	1	2	3	4	5	6	7	8	9	10
Detroit..	79	67½	53	39½	28	22	Official Classification			
Windsor..	68	59½	52½	43	34½	30½	27½	27½	—	24
Windsor over Detroit.. . . .	—	—	—	3½	6½	8½				
Windsor under Detroit.. . . .	11	8	½	—	—	—				

TO MONTREAL

	1	2	3	4	5	6	7	8	9	10
Detroit..	110½	97	74	55½	44	37½	Official Classification			
Windsor..	108	95½	81½	68	54	50	37½	40	—	36½
Windsor over Detroit.. . . .	—	—	7½	12½	10	12½				
Windsor under Detroit.. . . .	2½	1½	—	—	—	—				

Wheeling, W. Va., is one of the points shown in applicant's exhibit "A", and to illustrate a comparison of the two rate structures there are shown below the rates from Montreal and Wheeling to Grimsby, Ont., the distance being approximately the same from both points, namely, 384 miles from Montreal and 388 miles from Wheeling:—

TO GRIMSBY									
	1	2	3	4	5	6	7	8	9 10
Montreal..	90	79	68	55½	45½	41½	34½	36½	— 30½
Wheeling..	99½	85	66½	50	35	28	Official Classification		
Montreal over Wheeling.. . . .	—	—	1½	5½	10½	13½			
Montreal under Wheeling.. . . .	9½	6	—	—	—	—			

It will be observed that under these two rate structures, and for approximate distances, the first class rate from Wheeling is 9½ cents higher than from Montreal and the second class rate is 6 cents higher. Then, by reason of the differences in the scales and the percentage relationship between the classes, the rates from Wheeling are less for the third and lower classes."

With respect to the rates from United States points, they are subject to the jurisdiction of the Interstate Commerce Commission covering that portion of the haul within the United States, and to the Canadian territory where the principal discrepancies exist, the initial, and in the majority of instances, the greater, proportion of the haul is within the United States over the lines of carriers outside the jurisdiction of this Board. In the United States there are ten different major rate zones, or territories, or in other words, ten distinct territories in which different class rate structures are in effect. There is considerable variation in the rates prevailing in these different territories, such differences having been prescribed by the Interstate Commerce Commission in a number of cases, and being predicated upon the conditions prevailing in said territories with respect to operating conditions, geographical conditions, density or traffic, volume of originating traffic, nature of traffic, *i.e.*, whether consisting of preponderance of low grade freight and large volume of raw material, or high grade freight and large volume of manufactured products, together with many other minor features.

Obviously, where the international rates cover movements where the greater portion of the haul is within the United States, such rates being governed by the United States Classification and scale of rates, the United States rate structure is largely reflected in such international rates. To Windsor and Sarnia, Ont., practically the entire haul is within the United States. To Walkerville, Ont., with distances from the United States points (exhibit "A"), as follows:—

From—	Miles
Alton, Ill..	553
Washington, Pa..	324
Wheeling, V. Va..	292
Muncie, Ind..	245
Columbus, Ohio..	190
Newark, Ohio..	228
Lancaster, N.Y..	240
Rochester, N.Y..	298
Cincinnati, Ohio..	270
Bridgeton, Pa..	685
Pittsburgh, Pa..	319

Only two miles of the haul is within Canadian territory. Chatham, Leamington and London are Canadian points to which special reference was made concerning rates from the United States, the Canadian portion of the haul to these points, on traffic routing via the Detroit gateway, being 46, 40 and 110 miles respectively.

Some of the United States points shown in exhibit "A" are in Central Freight Association territory, others are in Trunk Line Association territory. Further, both as to the United States points of origin and the Canadian destinations, the rates are not predicated on a strict mileage basis. At both ends the territory is grouped, and under any group rate system, mileage is not the sole controlling factor, as numerous stations with varying mileages are included in the same group. Under these circumstances, in considering rates constructed on a system of grouping, the difference in distance between selected points cannot be regarded as being controlling, as has been held repeatedly by both the Interstate Commerce Commission and this Board.

From Central Freight Association territory to points Toronto and west, including all territory intermediate with Buffalo and south of the old Grand Trunk main line from Sarnia to Toronto, the rates are based on the so-called Disque "B" scale, and where, from such territory, the shorest route to Buffalo is through Canada via the Detroit and Port Huron gateways, the Buffalo rates are observed as maxima to this Canadian territory. From other points in Central Freight Association territory, where the short route to Buffalo is not through Canada, or where the traffic routes through Buffalo as well as via Detroit, the Buffalo basis is exceeded to Canadian points intermediate to the Detroit-Niagara frontier. To the Canadian territory north of the old Grand Trunk main line from Sarnia to Toronto, and east of Toronto to Montreal, not influenced by the Detroit or Buffalo rates as maxima, according to the gateway through which the traffic moves, the rates are on a somewhat higher basis. As illustrating this, it will be observed from exhibit "A", that from Alton, Ill., to Grimsby, a point intermediate to the Niagara frontier, the rate is 43 cents for 746 miles, while to Hanover, in the northern territory above referred to, the rate is 47½ cents for 740 miles.

From points in Trunk Line territory, the rates are predicated on the New York to Chicago rate, the intermediate territory, including Canada, being divided into groups representing a percentage of said rate.

From these United States points to Canadian territory east of Montreal, the rates are constructed on a different basis, and another different basis governs the rates to Western Canadian destinations moving via entirely different routes, and through a different rate territory.

As a result of the various conditions above referred to, and using mileage as the yardstick, as done by applicant, there can be found in the international rate structure itself, similar rate discrepancies to those pointed out by applicant as existing between the international rates on the one hand, and the Canadian rates from Montreal, on the other. For example, taking international rates only, as extracted from applicant's exhibit "A", and illustrating but a few of the rate differences existing, based on a mileage comparison, the following discrepancies are found:—

Miles	Rate	Miles	Rate
92..	30	446..	35
368..	30	446..	38½
		451..	36
368..	30	440..	42½
368..	30½	445..	36
367..	44	447..	43
366..	34	445..	35
360..	33	448..	47½
362..	38	448..	36
377..	42½	448..	34
378..	33½		
373..	36½	750..	88
		756..	43
750..	88	756..	56½
870..	53½	763..	62½
903..	48½	768..	46
		767..	43
837..	53½	767..	49
834..	61	766..	54

Miles	Rate	Miles	Rate
833..	66 $\frac{1}{2}$		
822..	84 $\frac{1}{2}$		
837..	56 $\frac{1}{2}$		
837..	58		
886..	50	1,049..	106 $\frac{1}{2}$
546..	50 $\frac{1}{2}$	1,052..	78 $\frac{1}{2}$
604..	49	1,490..	77 $\frac{1}{2}$
850..	88 $\frac{1}{2}$	1,500..	76
1,612..	82 $\frac{1}{2}$	1,537..	157
1,365..	89	1,537..	124
1,395..	82 $\frac{1}{2}$	1,537..	106 $\frac{1}{2}$
1,500..	76	1,535..	176
1,043..	85	1,543..	103
1,490..	77 $\frac{1}{2}$		
1,627..	173	2,051..	96 $\frac{1}{2}$
2,025..	108 $\frac{1}{2}$	1,343..	155
2,051..	96 $\frac{1}{2}$	1,366..	95

Rate comparisons, based on distance alone, or comparison of rates constructed under different circumstances, or in different territories, have little probative value in determining the existence of discrimination which is unjust. In 12 C.R.C., p. 350, *Canadian Oil Companies vs. Grand Trunk, Canadian Pacific and Canadian Northern Railway Companies*, there was involved an application directing the respondents to cease unjust discrimination by reducing the tolls from 66 to 56 cents per 100 pounds on shipments of petroleum and its products from Petrolia to Winnipeg, to enable the applicant to compete successfully with their competitors in the United States, the rate from certain United States points being 56 cents. The application was dismissed. At p. 354, the Board stated:—

“The criticism of the existing rate from Petrolia based on the comparisons with the rates above quoted is, therefore, made on the basis of the through rates from the initial points on the lines of American railways. It is impossible on what is before the Board to say that these through rates from the United States afford any necessary criterion of reasonableness in the matter of rates between Canadian points. The Board is not informed that the circumstances are similar, either in point of traffic or of operation. Nor is it informed what volume of traffic is moving on these rates. All that is furnished to it is a statement of rates and mileage comparisons, and while distance is, of course, one factor in rate making, it is unnecessary to elaborate the point that in testing the reasonableness of a rate a very considerable number of other factors must be considered. It has been stated by the Board that a mere comparison of distances without consideration of the peculiar circumstances affecting the traffic is not the final criterion of discrimination. *British Columbia Coast Cities v. Canadian Pacific Ry. Co.*, 7 Can. Ry. Cas., pp. 142, 143. The Board has also held that where the traffic compared moves over two different routes, this precludes the mere reference to differences in mileage rates being taken as *prima facie* evidence of discriminatory treatment. See *Complaint of Sudbury Board of Trade re rates on coal from Toronto to Sudbury*, file 11479. A similar position has been taken by the Interstate Commerce Commission, which states that ‘the mere comparison between the rates of one locality and the rates of another locality, without consideration of the different conditions and modifying circumstances, is not enough to establish the unreasonableness of the rates assailed.’ See *Lincoln Creamery v. Union Pacific Ry. Co.*, 5 I.C.C.R. 156 and 160, followed in *Dallas Freight Bureau v. M.K. & T. Ry. Co., et al.*, 12 I.C.C.R., 427. Where this is held as between railways which are subject to the jurisdiction of the regulative tribunal before which complaint is made, it is still more applicable in

a case where the initial railways quoting the rates which are used for purposes of comparison are not subject to the jurisdiction of the tribunal before which the complaint is made."

See also:—

Volume 13, Board's Judgments and Orders, p. 189, Complaint of A. Farquharson, Fernie, B.C., at p. 190.

Volume 16, Board's Judgments and Orders, p. 135, Application of the Canadian Shippers Traffic Bureau, at p. 144 and 145.

In 8 C.R.C., 10, at p. 11, Doolittle and Wilcox vs. Grand Trunk and Canadian Pacific Railway Companies, the Board stated that mileage, in many cases, is one of the minor factors in striking a rate.

In Volume 12, Board's Judgments and Orders, p. 92, complaint of Beachville White Lime Company, Beachville, Ont., the Board stated at p. 94: "Mileage is not, of necessity, a controlling factor in rate making."

In Volume 12, Board's Judgments and Orders, p. 268, Complaint of the Spanish River Pulp and Paper Mills, Limited, at p. 282, the Board stated:—

"As already set out, the Board has indicated that mileage is not the only and necessarily conclusive factor. The significance of this in connection with grouping in rate structures is important. Distance cannot be recognized as controlling. If it were, there could be no group rates. McCloud River Lumber Co. v. S.P. Co., 24 I.C.C., 89. Where rates are blanketed, mileage is not a controlling factor. Memphis Freight Bureau v. I.C.R.R. Co., 27 I.C.C., 507. The maintenance of a group rate requires more or less disregard of distance, and this sometimes results in varying degrees of inequality. Waukesha Lime and Stone Co. v. C.M. & St. P. Ry. Co., 26 I.C.C. 515."

In Volume 16, Board's Judgments and Orders, p. 135, Application of the Canadian Shippers' Traffic Bureau, the Board stated, p. 145: "Group or blanket arrangements being made on averages of distance, and producing average conditions, do not afford any necessary criteria of what is a reasonable rate on a mileage basis. Group rates in the United States, in various cases, cover very extensive territories."

In Volume 17, Board's Judgments and Orders, p. 561, Application of the Dominion Sugar Company, Limited, Chatham, Ont., at p. 564, the Board said:—

"Even with regard to rates on the same line of railway, a difference in rates on different parts of the line does not necessarily constitute unjust discrimination, and to carry the illustration further, there may be, without unjust discrimination, over the same portion of the same line, a difference in rates where the movements are in the opposite direction.

"As the result of various freight rate investigations by the Board, particularly the Western Rates Case in 1914; *re* Freight Tolls, 1922; and the General Freight Rates Investigation, in respect to which judgment issued in September, 1927, it is a matter of general knowledge that there are differences in the rates on the same traffic for similar distances in different parts of the country, and that this does not constitute unjust discrimination of the character forbidden by the Railway Act."

In Volume 18, Board's Judgments and Orders, p. 331, in the matter of complaints of various parties *re* proposed cancellation of import rates on tea from Vancouver to points in Western Canada, at p. 337 it is stated:—

"The Board has had before it in many cases questions of discrimination and has pointed out in its decisions that mere difference of treatment as between different sections does not in and of itself establish the

existence of discrimination which falls within the inhibitions of the Railway Act. Differences in rates may arise from different conditions. A particular example of this was indicated in one of the Board's recent decisions—that dealing with the General Rate Investigation, Board's Judgments and Orders, Vol. XVII, p. 131. The Chief Commissioner, in dealing with, *inter alia*, the question of different standard mileages East and West, pointed out, at p. 135, that no reasons had been urged sufficient to make it advisable that these differences should be eliminated or altered. It was set out that 'their origin and the reasons for their establishment and maintenance have been frequently explained; and, in my view, such reasons stand as a justification for the continuance of these existing features of our rate system substantially unimpaired.' That is to say, so far as the different standards enter into or affect rates based thereon they are justification for different rates in different sections for identical mileages."

In Volume 18, Board's Judgments and Orders, p. 400, Complaint of the Chisholm Sawmills, Limited, Edmonton, Alta., at p. 401, it is stated:—

"The mileage test which complainant asks to have set up, while showing that the rates from the eastern prairie points are proportionately lower than rates from the Edmonton territory, disregards the fact that the former have been built up under distinctly different conditions."

See also Volume 18, Board's Judgments and Orders, p. 441, complaint of W. B. Plaunt *et al*, re rates on pulpwood from Canadian points to Johnsonburg, Pa., at p. 453, 454, 455 and 456. At p. 455 and 456, decisions of the Interstate Commerce Commission, dealing with the same matter, are cited.

The Interstate Commerce Commission have also stated:—

"The commission has repeatedly recognized that mere differences in rates do not necessarily result in prejudice which is undue, and complainants' evidence is of the most general character. West Texas Chamber of Commerce v. H. & T. C. Ry., 129 I. C. C. 546, 555.

"Comparisons based merely upon differences in distance do not constitute sufficient justification for a finding either of unreasonableness or of undue prejudice. Bos Sand Co. v. A., T. & S. F., 112 I. C. C. 121, 123."

With respect to the majority of the rates shown by applicant in exhibit "A", as applying from United States points, it is not apparent, nor was evidence adduced by applicant showing, wherein they are subjected to any actual disadvantage, from a rate standpoint, in meeting United States competition, thus necessitating a 25 per cent reduction in rates from Montreal as applied for. One material factor in this connection, is the matter of the total burden of rate paid from point of origin to destination. The Board has stated:—

"The ultimate test of discrimination is to be found, not in a difference of rates, but in the question whether as a result of this difference an injury is worked to an individual or locality. One test of this is whether the locality alleged to be favoured actually gets into a common market on a lower rate. The rate paid rather than the distance travelled is important." 20 C.R.C. 1, at p. 23, *in re* Telegraph Tolls. Volume 12, Board's Judgments and Orders, 268 at p. 279, Complaint of the Spanish River Pulp and Paper Mills Limited.

Seven hundred and eleven of the 1,155 rates shown from United States points are higher, and, in a great many instances, very much greater, than the rates from Montreal to the same points, illustrations taken from exhibit "A" being as follows:—

From Montreal to:	Rate Cents	From the United States points to same point, the rates vary from:
Page 1 of Exhibit—		
Cornwall	24	36½ cents to 66 cents.
Fort William	79	69½ cents from 1 point; 89 cents to 106½ cents from other 10 points.
Brockville	30½	36½ cents to 64½ cents.
Page 2 of Exhibit—		
Kingston	34½	30 cents from 1 point; 35 cents from 1 point; others from 43 cents to 62½ cents.
Ottawa	29	36½ cents to 66 cents.
Pembroke	36½	35½ cents from 1 point; others from 42½ cents to 73 cents.
Prescott	29	36½ cents to 66 cents.
Renfrew	34½	31½ cents from 1 point; others from 39½ cents to 70 cents.
Page 3 of Exhibit—		
Smiths Falls	30½	36½ cents to 64½ cents.
Timmins	79	74½ cents from 1 point; 76 cents from 1 point; others from 88½ cents to 102½ cents.
Page 4 of Exhibit—		
Armagh	43	50½ cents to 80½ cents.
Granby	22	36½ cents to 70 cents.
Mont Joli	45½	58½ cents to 87 cents.
St. Hyacinthe	19½	36½ cents to 70 cents.
On this page, all rates from United States points higher than from Montreal.		
Page 5 of Exhibit—		
Moncton }	50	61½ cents to 90 cents.
St. John }		
Halifax }	52½	63 cents to 91½ cents.
Truro }		
Yarmouth	66½	80 cents to 108½ cents.

All rates on this page from United States points higher than from Montreal.

Pages 6 and 7 of Exhibit—

The majority of the rates are higher from United States points, and in a great many cases where the rates from the United States points are higher than from Montreal, the distance from the United States point is appreciably less than from Montreal. For example:

To	From Montreal		From	Miles	Rate
	Miles	Rate			
Brandon	1550	132	Wheeling, W. Va.	1388	135
Winnipeg	1417	114	Pittsburgh, Pa.	1318	117
Estevan	1707	150	Columbus, O.	1310	155
Regina	1773	155	Columbus, O.	1436	160
Calgary	2240	200	Newark, O.	1913	205
Kamloops	2631	234	Cincinnati, O.	2241	239

The rates shown from United States points in applicant's exhibit "A" are, generally speaking, 5th class rates applicable on all traffic falling within that class in the United States Classification. In so far as they apply on glass bottles and jars classifying 5th class, it is quite apparent from the evidence that the majority of said rates are merely "paper" rate comparisons, by which is meant, rates on which the traffic is not moving. In the Board's previous judgment, *supra*, it was stated, p. 734:—

"With regard to the United States shipping points named by applicant, Mr. Ransom stated that there had been no shipments of bottles from Pittsburg into Canada during 1925; that manufacturers at Columbus stated they had not shipped a bottle into Canada for over two years; that manufacturers at Newark stated they had only shipped one car into Canada during 1925, which was destined to Toronto. There is nothing on the record showing whether or not there were any shipments from Washington, Pa. Mr. Ransom stated the 50 cars shipped to Chatham in 1925 were consigned to Libby, McNeil and Libby and purchased through the main offices at Chicago from manufacturers at Wheeling, W. Va. The rate from Wheeling to Chatham is 32 cents per 100 pounds, while the rate from Wallaceburg to the same point is 12½ cents, and from Hamilton 30½ cents. It is stated the 13 cars for London were

from Muncie, Ind., from which point the rate is 31 cents, as compared with 25 cents from Hamilton, and $27\frac{1}{2}$ cents from Wallaceburg. The 74 cars to Walkerville were consigned to the Walkerville distilleries and shipped from Alton, Ill., at a rate of 38 cents, as compared with 24 cents from Wallaceburg, and $34\frac{1}{2}$ cents from Hamilton. To all of the above named points the rates from Hamilton or Wallaceburg are lower—in some instances very appreciably so—than from the United States points.”

It was also set out that the movement from United States points had been restricted to eight points in the whole Ontario territory, Toronto and west, while, relatively, the same rates apply throughout this territory. There was nothing adduced at the hearing to show any change in the conditions, as above set out, or that shipments are actually moving from the United States points shown in this exhibit. Both this Board and the Interstate Commerce Commission have repeatedly set out the position with regard to such “paper” rate comparisons. In Volume 12, Board’s Judgments and Orders, p. 268, Complaint of the Spanish River Pulp and Paper Mills, Limited, at pp. 276 to 279, where various cases are cited, and at p. 279 it is stated: “Under the decisions, then, mere mileage comparisons without detail as to the traffic, if any, moving, are not conclusive. Further, mere ‘paper’ rates under which no commodity is moving are equally inconclusive.”

Volume 18, Board’s Judgments and Orders, p. 441, Complaint of W. B. Plaunt, *et al re* rates on pulpwood, at p. 443.

From what has already been earlier set out herein, it is shown that ever since the Board commenced to function, it has been fully cognizant of the matter of discrepancies in the Canadian rate structure as compared with the international rate structure, so that the issue here raised by the applicant is not, in any sense, traversing new ground. It has been repeatedly held by the Board that the existence of such rate differences does not constitute an unjust discrimination of the character forbidden by the Railway Act. As stated, this matter early engaged the consideration of the Board for a considerable length of time, resulting in its Order No. 3258, dated July 6, 1907. This order prescribed a revised and reduced basis of rates between points in eastern Canadian territory, removing entirely, on certain classes, and reducing, as far as considered practicable, on the remaining classes, the discrepancies in rates between the two rate structures. The Board prescribed what it considered to be reasonable rates between these Canadian points, and this is the basis of rates now in force, subject, of course, to the general advances and reductions in rates directed under various orders since 1916, owing to changes in the cost of railway operation. The same question has been before the Board subsequently, in connection with various complaints. Possibly the most pertinent instance is that referred to in the previous judgment herein, *supra*, p. 731, wherein it is stated:—

“Applicant referred to judgment of the Board, dated July 30, 1904, which prescribed certain commodity rates on glass bottles, in carloads, from Wallaceburg, stating that said rates had been prescribed to meet competition from the United States and Germany, and that in 1919 the Board had issued an order permitting cancellation of the commodity rates based on the claim that the importation from Germany had been eliminated, and was restricted from the United States. A perusal of the record in that case shows that the Board prescribed certain rates on glass bottles in 1904 from Wallaceburg to London, Kitchener, Hamilton, Toronto and Montreal. Subsequently, the railway companies voluntarily added a number of destinations on the same basis, and then considered it necessary to establish rates on relatively the same basis

from the glass manufacturing points of Toronto and Hamilton. From Montreal a commodity rate was established to Walkerville only, presumably to enable competition with Wallaceburg for the distillery's business. The rates required by the judgment in 1904 appear from the record to have been largely the result of rebating practices antecedent to the Railway Act. In 1918 the carriers filed amendments to their tariffs providing for cancellation of the commodity rates from Toronto, Hamilton and Montreal, and also made application for rescission of the judgment of 1904 so as to enable them to cancel the special commodity rates from Wallaceburg. The tariff amendments were suspended by an order of the Board and the matter was subsequently heard at Ottawa, September 10, 1918, and by an order of the Board No. 28348, dated May 19, 1919, the companies were permitted to cancel the special commodity rates and place this traffic on its appropriate fifth class basis from all points. With regard to United States competition, it appears from a perusal of the record in the 1918 case that the evidence adduced by those opposing the cancellation of the commodity rates was along the same lines as that which is before the Board here, and after full consideration, the Board authorized the placing of this traffic on the fifth class basis between Canadian points."

It will be noted that when the matter was before the Board in 1918, as well as on the application of 1926, the Board was fully cognizant of the issue here raised.

There was before the Board in 1909 a complaint from the Plymouth Cordage Company, alleging that the rates charged on binder twine, in carloads, from Welland, Ont., to Canadian points west of Welland, were unjustly discriminatory with respect to the rates charged on the same articles from Buffalo and Auburn, N.Y., and North Plymouth, Mass., to the same destination points. It is set out in the judgment in that case that there was a rate of 10 cents per 100 pounds on binder twine, in carloads, from Welland to Detroit and Port Huron; at the same time the rate from Welland to Sarnia and Windsor was 18 cents. From Buffalo to Sarnia and Windsor the rate was 10 cents as compared with 18 cents from Welland. From Auburn through this territory there was a rate of from 13 to 14 cents, which was lower than the rate from Welland to the same points up to and including Sarnia and Windsor. For reasons set out in the judgment, the complaint as to unjust discrimination was dismissed by Order No. 7897, dated August 10, 1909. Subsequently, in 1910, there was consideration given to the reasonableness of the rates, per se, on binder twine from Welland to points in Canada, and certain rates prescribed by Order No. 15286, dated March 15, 1910. Subsequently, by Order No. 33245, dated December 26, 1922, Order No. 15286, above referred to, was rescinded, and it may be stated, as a matter of information that at present the rates on binder twine, in carloads, to Windsor, Ontario, are: From Welland, Ont., 34½ cents; from Buffalo, N.Y., 21½ cents; and from Auburn, N.Y., 26 cents.

By Orders Nos. 6141 and 6142, dated January 27, 1909, the complaints of F. B. Stevens and Company and J. B. Stringer and Company, of Chatham, Ont., alleging that the railway companies unjustly discriminate against Chatham in not applying from intermediate Canadian points, the same rates on corn as those in effect from Detroit, Michigan, to Montreal and points east, were dismissed by the Board.

In 1910, the Board considered an application of the Montreal Board of Trade, on behalf of eastern Canadian manufacturers of rubber goods, concerning classification ratings on rubber hose, rubber packing, and rubber tires (file 9428.2). In the Board's judgment dated July 6, 1910, there is set out

the rates on these articles from Boston, Mass., to various points in Ontario; also from Montreal to the same points, the latter being greater. It was not contended by the applicant that the rates from Montreal were, in themselves, unjust or unreasonable; they asked for removal of the discrimination in rates. Competition was referred to. The decision of the Board was that the grievance was not of such magnitude as to warrant the Board in ordering a reduction in ratings from Montreal, which had not been shown to be unjust or unreasonable, and the application was dismissed by Order No. 11326, dated July 26, 1910.

In 11 C.R.C., p. 347, application of the Mount Royal Milling and Manufacturing Company of Montreal, it was alleged that the rates on cleaned rice from Montreal to Canadian destinations were unreasonably high in comparison with the rates from Boston to the said destinations in Canada through Montreal. Some changes in the less than carload rates from Montreal were directed, but the rates so directed were still higher than those applying from Boston and New York.

The matter of these international rates, as compared with Canadian rates, was again referred to in Volume 7, Board's Judgments and Orders, p. 411, Application by Canadian Railway Companies for a recommendation to the Governor in Council, under the War Measures Act, for a general advance in freight and passenger rates, at pp. 435, 436 and 437.

In Volume 11, Board's Judgments and Orders, p. 224, Application of the Rubber Association of Canada for revised ratings on rubber tires and tubes, there was again involved comparison between rates on these articles between points in Canada as compared with international rates, which is the same issue as was involved in a previous case to which reference is above made. A change in the ratings was directed, but it is set out that the rates directed for application within Canada are higher than the international rates for similar distances. It is therein set out that there were large quantities of tires being imported into Canada from United States points.

In Volume 17, Board's Judgments and Orders, p. 659, complaint of the Dominion Millers' Association, Toronto, that the rates on ex lake grain, milled in transit, from Ontario points to New York for export, discriminate in favour of Chicago, Detroit, Toledo, Buffalo, etc., there was involved an **allegation** of unjust discrimination in a comparison of rates from the United States points named to New York, as compared with higher rates from intermediate Canadian points. For the reasons set out in the Judgment, the complaint was dismissed by the Board.

Complaints involving the same issue as here under consideration, were also dealt with in the matter of Order in Council P.C. 886 of June 5, 1925, requiring the Board to make a full and complete investigation into the rate structure of railways subject to the jurisdiction of parliament, see Volume 17, Board's Judgments and Orders, at pp. 343 and 349.

Adverting now, to the question of movement of traffic under the rates compared, and the competition existing between the Canadian and United States manufacturers of glass bottles and jars, and whether it is shown on the record before the Board that the applicant is detrimentally affected by the rates from United States points to an extent that these rates are unjustly discriminatory against the applicant, and unduly preferential to the United States manufacturers.

What is material here, as stated by the Deputy Chief Commissioner at the hearing, p. 4183, is proof of detriment to the applicant which is traceable to, and resulting from, the rate differences complained of. The position on this point has been stated repeatedly, and is well known.

In Volume 12, Board's Judgments and Orders, p. 268, Complaint of the Spanish River Pulp and Paper Mills, Limited, at pp. 278 and 279, it is stated:—

"In dealing with the question of discrimination, the matter of detriment, if any, to which the applicant is subjected by the alleged unjust discrimination or undue preference must be considered. Difference in rates is discrimination; but the prohibitions of the Railway Act in regard to discrimination are prohibitions of *unjust discrimination* or *undue preference*, and the questions is whether the discrimination amounts to an unjust discrimination or undue preference." In *re* Western Tolls, 17 Can. Ry. Cas., 123, at pp. 148 to 156.

.....
 "One criterion of unjust discrimination is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place.

Wegenast v. G.T.R. Co., 8 Can. Ry. Cas., 42, at p. 45.

Toronto and Brampton v. G.T.R. and C.P.R. Cos., 11 Can. Ry. Cas., 370, at p. 375.

Massiah v. C.P.R. Co., Board's Orders and Judgments, Vol. 4, p. 106.

"In Ontario Paper Co. v. G.T.R. Co., 24 Can. Ry. Cas., 177, no evidence was submitted that any rate advantage possessed by any competitor had rendered it more difficult for the applicant company to do business, and the allegation of unjust discrimination was held to be unfounded."

"Evidence is required as to how rates complained of react to the detriment of the applicant.

Zwicker & Co., v. Can. Nat. Rys., Board's Orders and Judgments, Vol. 12, No. 16, at pp. 152, 153.

"The ultimate test of discrimination is to be found not in difference of rates but in the question whether as a result of this difference an injury is worked to an individual or locality. One test of this is whether the locality alleged to be favoured actually gets into a common market on a lower rate. The rate paid rather than the distance travelled is important."

"In *re* Telegraph Tolls, 20 Can. Ry. Cas., 1, p. 23."

In Volume 13, Board's Judgments and Orders, p. 161, Complaint of Messrs. Plunkett and Savage, Calgary, and Scott National, Limited, Medicine Hat, Alta., at p. 164, it is stated:—

"One criterion of unjust discrimination is whether the district or individual alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place. Where no evidence was submitted that any rate advantage possessed by a competitor had rendered it more difficult for the applicant company to do business, the allegation of unjust discrimination was held to be unfounded." Ontario Paper Co. vs. G.T.R. Co., 24 Can. Ry. Cas., 177.

Reference may also be made to:—

Volume 13, Board's Orders and Judgments, p. 233, Application of the Calgary Livestock Exchange, the Southern Alberta Wool Growers' Association, *et al*, at pp. 247 and 248.

Volume 15, Board's Judgments and Orders, p. 2, Complaint of the Paper Manufacturers of Winnipeg, at pp. 5 and 6.

Volume 16, Board's Judgments and Orders, p. 135, Application of the Canadian Shippers' Traffic Bureau, at pp. 145 and 146.

The Interstate Commerce Commission has stated:—

“To be undue, the discrimination must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favoured.” *Chicago Board of Trade v. A.T. & S.F. Ry. Co.*, 29, I.C.C., 438, 443.

“A showing of a disparity of rates between different points does not necessarily make out a case of, or result in, undue prejudice, but it must also appear that shipments are made or prevented because of the rate relationship.” *Nashville Machine and Supply Co. v. L. & N.*, 118 I.C.C. 577, 578, 579.

Exhibit “P”, filed by applicant, shows importation of glass carboys or demijohns, bottles, n.o.p., decanters, flasks, jars and phials, from the United States, as follows:—

1921.. . . .	\$ 1,495,384
1922.. . . .	673,975
1923.. . . .	819,711
1924.. . . .	978,552
1925.. . . .	1,045,953
1926.. . . .	1,062,367
1927.. . . .	1,105,778
1928.. . . .	1,205,069

This exhibit, however, is not very conclusive for the purpose of the issue here. In the first place, as stated by applicant, these figures are taken from Government statistics, which include “a lot of glass that is not made in Canada.” Secondly, it is in the form of the value, in dollars, of the glass imported, and there is nothing on the record enabling the formation of any opinion as to the quantities, or what proportion represents products actually competing with applicant. As contrasted with this, such information as is available with regard to the Canadian movements, is in the form of carloads or tons, with no data concerning the value in dollars, so that there is no unit of comparison. The United States importation for the years 1921 to 1926, inclusive, was put in at the former hearing, and the figures for the two subsequent years do not show a material change. The value of the imported glass in 1928 is somewhat higher than in 1926, but there is no information to show whether this increase occurred in bottles or jars actually competing with applicant, or in other forms of glassware not made by them. Applicant stated, p. 4182: “From the United States, there would be probably half a million of goods coming in that either we or our competitors can manufacture.” Applicant stated this was merely an estimate, and was unable to furnish any figures showing the actual movements of competing products from the United States.

The carriers explained the difficulty in obtaining an absolutely accurate statement showing the receipt of glass bottles and jars from the United States, but stated that a canvass they had made of the situation showed shipments of new bottles for the year 1928, as follows:—

No. of Cars	<i>Montreal</i>
4	Acet. of G. Wyde & Sons. Small bottles used principally for bottling peroxide.
4	Nichols Chemical Co. Carboys for acid.
1	Lymans, Ltd. 5 gallon bottles.
5	Lymans, Ltd. 12 ounce bottles for Absorbine Jr. sent by the Parent Co. at Springfield, Mass.
20	W. T. Rawleigh Co.
2	Laurentian Co.
6	Bovril, Ltd. They advise they are now buying some of their bottles in Canada.
3	Davis and Lawrence. Small bottles for drugs and medicines.
1	Chas. Gurd.
1	Union Bottle Co.
1	Laurentian Laboratories.
1	A. Raymond.
1	California Perfume Co.

St. Johns, Que.

- 2 Singer Mfg. Co. small oil bottles. This firm is now buying their bottles in Canada.

Toronto, Ont.

- 37 We find receipts of 37 cars, 12 being a special bottle not made in Canada for packing Eno's Fruit Salts. 5 were consigned to the Dominion Glass Co. who frequently import bottles of a kind not made by them. 20 others consigned to various.

Walkerville, Ont

- 23 Consigned to Walker and Sons, for liquor.

London, Ont.

- 1 Medicine bottles—special design.
1 Gorman Eckert Co. special size—are unable to obtain in Canada.

2

Chatham, Ont.

- 31 Bottles for pickles.

Leamington, Ont.

- 90 Bottles for Pickles.

Shawinigan Falls

- 14 Demijohns—not made in Canada.

Waterloo, Ont.

- 2 Special design—not made in Canada at that time—now buying in Canada.

Windsor, Ont.

- 32 Proprietary Agencies. Bottles of blue colour for Phillips Magnesia. Canadian manufacturers not successful in matching colour. It must be the same as that used for packing the same articles in the States.
Parke Davis Drug Co. are bringing some shipments by truck from their Detroit factory. No record of the quantity.
Frederick Stearns Drug Co. bring a few bottles from their Detroit plant by truck but most of their supply is obtained in Canada.

The foregoing shows a total of 283 carloads of new bottles from various United States points during the year 1928. Of these, 87 carloads were said to be of a kind not made in Canada. These figures were not controverted by applicant, except, with respect to 12 cars to Toronto for packing Eno's Fruit Salts, applicant stated such bottles are manufactured by them, while the carriers state the information given them by the consignee was that they are a special bottle not made in Canada. It is further stated by the carriers, and admitted by applicant, that some of the bottles are brought in from the United States because the quantity desired by the individual Canadian purchaser is not sufficient to warrant the Canadian manufacturer making a special model for such a small quantity of a particular kind of bottle. In this connection, it is noted that some bottles of a kind not made by them are brought in from the United States by the Dominion Glass Company, the largest Canadian manufacturer of these articles. The 121 cars into Chatham and Leamington were consigned to the Heinz Company and Libby McNeil and Libby. It was stated, in the former hearing, that these were purchased through the head offices of these companies in the United States. It is also noted, from carriers' exhibit No. 1, that 120 cars were shipped by the Canadian manufacturers to Chatham and Leamington in 1928. It will be further observed that into Montreal, where the applicant, also the Dominion Glass Company, have plants, 50 carloads were brought in from the United States. 20 of these were for the W. T.

Rawleigh Company, who, it is stated, have their own bottle factory in the United States, and manufacture therein, bottles for their branches in both the United States and Canada. Obviously, the importation of United States bottles into Montreal was not, in any way, influenced by any question of disparities in freight rates, as there is no freight rate with respect to bottles purchased in Montreal from applicant or its competitor there. An exhibit was filed covering 32 of the 50 carloads, being the shipments brought into Montreal, via the Canadian Pacific Railway, from the United States in 1928, showing that the freight rates thereon ranged from 46 cents to \$1.11 per 100 pounds. It seems clear that to other points also, in many instances, at least, the matter of rate had no bearing on the movement.

Mr. Ransom stated the carriers had never been shown a place in Canada where the applicant had tried to market its goods and lost the business to a United States firm as a result of the difference in freight rate; that, if it had, the carriers would have been glad to investigate it; that where the Canadian carriers have found it necessary, to enable the Canadian manufacturers to meet such competition, they have established commodity rates; that in this case, they have made just as careful investigation as in other cases, and find that the bottles coming in from the United States cover, generally speaking, cases where the parent company is located in the United States, in some instances making their own bottles and shipping them into Canada, or the bottle is of a kind not manufactured in Canada, or where the requirements of the individual Canadian purchaser do not warrant the Canadian manufacturer making a special model for such a small quantity.

In addition to the new bottles, there is included in the United States importation, a considerable volume of old, or secondhand, bottles, principally from Detroit and Buffalo consigned to bottle dealers at various Canadian points, but applicant's complaint is not directed against this movement.

Milk bottles are not made by applicant, but are made by its Canadian competitors. This is the only item shown separately in the Government statistics covering importation. As bearing on importation from the United States, the carriers stated:—

“In the Statistics of the Department of Trade and Commerce showing importations of bottles into Canada, milk bottles are shown separately and the following are the importations of milk bottles into Canada from the United States during the three years ending December 31, 1928:

	1926	1927	1928
Value	\$33,302	\$27,764	\$24,379

“It will be observed that there was a decrease in 1927 from the previous year of 16·6 per cent and a decrease in 1928 receipts from 1927 of 12·2 per cent. The receipts for 1928 were 26·8 per cent less than in 1926.”

This application embraces the rates to all Canadian points, but the particular territory where the differences in the rate structures result in lower rates from United States points than from Montreal, is that covered by the former application; namely, points in Ontario, Toronto and West. Outside of this territory, speaking in general terms and subject to some exceptions, the actual rates from United States points are higher than from Montreal, so that if there is detriment to the applicant as a result of the rates compared, it is particularly in the Ontario territory, Toronto and West. The movement of traffic into this territory was very carefully analyzed in the Board's judgment, *supra*, pp. 733, 734 and 735, and what is stated in this respect in that judgment, may be read as part of this judgment. Nothing was adduced on this

record requiring any modification of what was therein said, or to indicate any changed condition since that time. The shipments from United States points to that territory for 1926 are shown as totalling 225 cars. The figures on this record show 217 cars into the same territory for the year 1928. After analyzing the traffic movements, it was stated in the judgment, *supra*, p. 735:—

"The record indicates successful competition from Montreal into this territory, not only with respect to shipments of United States origin, but also those originating at the glass manufacturing plants located within said territory. Taking Chatham, for example, if the bottles move from Wheeling, W. Va., at a rate of 32 cents, rather than from Wallaceburg, from which point the rate is $12\frac{1}{2}$ cents, or from Hamilton at a rate of $30\frac{1}{2}$ cents, then what rate would be necessary from Montreal to enable the manufacturer there to compete with the United States manufacturer? If the rate controls the movement from United States points, why has the movement been restricted to eight points in the whole territory, Toronto and West, when relatively the same rates apply throughout this territory? It is obvious from the record that the actual rate competition which applicant meets in this territory is from Hamilton and Wallaceburg; that there are factors aside from the freight rate which influence the marketing of these articles.

"During the years 1925 and 1926 there were shipped to London 35 cars from Wallaceburg, from which point the rate is $27\frac{1}{2}$ cents; 38 cars from United States points from which the rates range from 30 to 34 cents; and 242 cars from Montreal at a rate of 50 cents. During the same years to Walkerville there were shipped 73 cars from Wallaceburg at a rate of 24 cents; 145 cars from United States points at rates varying from 28 to $31\frac{1}{2}$ cents; 149 cars from Hamilton at rate of $34\frac{1}{2}$ cents; and 235 cars from Montreal at rate of 54 cents. The fact that during the year 1926, 962 cars were shipped from Montreal to all points Toronto and west, while to this same territory, with appreciably lower rates, only 918 cars were shipped from Hamilton and Wallaceburg, is significant as bearing on the rate situation as it affects the actual movement of the traffic."

Further amplification of the statement "that there are factors aside from the freight rate, which influence the marketing of these articles," is contained in what has been above set out.

The evidence does not show that the importation of the particular lines of bottles that applicant manufactures, has increased, whereas there has been a large increase in the volume of this traffic between points in Canada. The carriers furnished the following statement of shipments made by rail from the Eastern Canadian plants into the territory west of Montreal and east of Port Arthur:—

From	1927 Cars	1928 Cars
Montreal.. . . .	1,222	1,685
Hamilton.. . . .	651	967
Wallaceburg.. . . .	498	408
Total	<u>2,371</u>	<u>3,060</u>

It is also stated there is an extensive movement of bottles by truck. Mr. Ransom stated:—

"The trucking of glass bottles from the Hamilton plant of the Dominion Glass Company has increased tremendously in the past year or two and we find as high as 40 truck-loads in one day leaving their plant. These are 4 and 5 ton trucks and they handle approximately 8,000 pounds or 4 tons at a load. It is estimated that their average for the year around would be approximately 20 truck loads per day. During

the year of 1927 they were handling 4 to 5 truck-loads a day from Hamilton to Toronto, in 1928 the average was 9 to 10 trucks per day. This will indicate that there is a tremendous tonnage of bottles moving from plants of Canadian manufacturers by truck that do not appear in the figures we have shown."

Applicant filed exhibits "R" and "S", giving totals of their carload shipments, by rail, of glass bottles and jars. In summary form, applicant's shipments were:—

	Tons	Per cent of 1925 Tonnage
1925..	4,551	
1926..	10,918	239.9
1927..	14,843	326.1
1928..	17,181	377.5

We do not consider the allegations of unjust discrimination have been sustained, and the application, therefore, should be dismissed.

A. D. CARTWRIGHT.

Secy. B.R.C.

OTTAWA, January 30, 1931.

Application of the Express Traffic Association of Canada for approval of proposed Supplement "L" to Express Classification for Canada, No. 7.
File 4397.98

JUDGMENT

BY THE BOARD:

By proposed Supplement "L" to Express Classification No. 7, submitted to the Board in January, 1930, by the Express Traffic Association of Canada, the Board was asked to approve the cancellation of Condition of Carriage 16, applying on light and bulky goods; and to authorize an increase in rating from first class to one and one-half times first class on feathers (millinery); flowers, foliage or fruit, artificial; hat or bonnet frames; hats; millinery and millinery goods; and straw goods; the articles enumerated representing the class of express traffic which, when shipped in fibreboard or corrugated strawboard cartons, constitutes the bulk of the movement under Condition of Carriage 16.

Numerous objections were received from many points, and in order to afford all parties the fullest opportunity to make their submissions, the matter was set down for hearing at sittings of the Board at Winnipeg on March 12, Edmonton on March 17, Vancouver on March 21, Montreal on June 6, Toronto on November 18, 1930, with final hearing at Ottawa on January 20, 1931.

Following a general investigation into express rates and practices during the years 1908, 1909 and 1910, judgment of the Board issued in 1910 dealing, amongst other things, with the express classification and prescribing the rules and ratings authorized by the Board for inclusion therein, including the provisions of Condition of Carriage 16. In that investigation it was clearly shown that with respect to articles such as above enumerated, it involved the carriage by the express companies of large and light packages in large volume, the tolls on which were disproportionately less for the space occupied than the tolls applying on general express traffic. Instead of advancing the rating, the matter was dealt with by providing for these light and bulky goods, when shipped in corrugated cartons, arbitrary minimum weights, commonly termed conventional weights, which were in excess of the actual weight, and while the result

was an increase in the rating on these packages, the charge per shipment or package was still considerably less than for heavier goods shipped in packages of the same dimensions and character. The conventional weights at that time prescribed have since continued and are still in force, although there have been some minor changes in the wording of the rule dealing with the description, construction and strength of the corrugated cartons, etc. These conventional weights are as follows:—

“Such shipments will be carried at actual weight at First Class rates, subject to the following minimum weights:—

Over	50	to	55	inches,	exterior	measurement..	15	lbs.
“	55	“	60	“	“	“	18	“
“	60	“	65	“	“	“	20	“
“	65	“	70	“	“	“	25	“
“	70	“	75	“	“	“	30	“
“	75	“	80	“	“	“	35	“
“	80	“	90	“	“	“	45	“
“	90	“	100	“	“	“	60	“

Over 100 inches not taken.

(Exterior measurement means length, width and height added together.)”

The conventional weights authorized by the Board were worked out in conference between the principal shippers and the express companies and the Board approved the agreement reached between them. In its judgment, the Board stated:—

“The Weight and Measurement Rule—Light and Bulky Shipments

This provision gave rise to much discussion, and a great deal of time was taken in getting it adjusted. There was much to be said in favour of the complaint advanced by the express companies that the large and light packages that were being transmitted in enormous quantities over their lines took up a great deal more room in express cars than they were entitled to in proportion to the tolls they were paying. Of course, the space allotted for express traffic upon passenger trains is necessarily limited, and a system that permitted one section of shippers to take up more than what might fairly be considered as space for their traffic at similar tolls to the traffic of other shippers occupying much less space, might easily work discrimination. However, the parties chiefly concerned and the companies evinced a spirit of fairness in meeting each other, and the Board hopes that the rule finally adopted, viz., 16, may work satisfactorily.”

Mr. Ham, Chairman of the Express Traffic Association, stated that when these conventional weights were established in 1911, practically all shipments of the articles here under consideration were made in the type of package subject to the conventional weights; wooden crates were in very little use and a much heavier crate than now in use; while the wirebound wooden crates now used to a considerable extent, are only a recent development in the past few years. On the wooden and wirebound crates the conventional weights do not apply, so that they are carried at actual weight, first class rate, with the result, that although the three types of packages are approximately the same weight per cubic foot when containing the articles here in question, the charge on a wooden and wirebound crate is considerably less than on a carton. Complaints have been made to the express companies by the carton manufacturers that they are being discriminated against. Mr. Ham outlined in considerable detail (page 3345 *et seq*) the steps that have been taken during the last ten years looking to a modification in the classification. Without giving the details as set out in the record, it may be briefly stated that during this

period various proposals have been made, and numerous conferences held between representatives of the express companies and interested shippers, but the parties have been unable to agree on a rating acceptable to all; with the result that the matter is again before the Board for disposition. In his letter submitting proposed Supplement "L", Mr. Ham stated:—

"For goods of a light and bulky nature, such as millinery, packed in fibreboard or corrugated strawboard cartons, conventional billing weights—somewhat higher than the actual weights—are provided by Condition of Carriage No. 16 of Express Classification for Canada No. 7, while the charges on such articles packed in wooden containers are assessed on the basis of actual weight. As a result, the carton manufacturers have complained that their containers are discriminated against, and claim shippers of millinery and goods of like nature have turned to wirebound boxes and crates, in lieu of cartons. In an attempt to overcome the difficulty referred to, proposed Supplement "B" to Express Classification for Canada No. 7 was submitted to the Board of Railway Commissioners for approval on October 24, 1927. By Supplement "B" we endeavoured to extend to millinery, etc., packed in wooden boxes and crates the conventional weights provided in Condition of Carriage No. 16 for millinery and other light and bulky goods in cartons. Objections to the changes proposed by Supplement "B" were raised by representatives of the trade bodies, and we have since endeavoured to come to some arrangement satisfactory to all concerned. I regret to advise the Board, however, that so far we have been unsuccessful in our negotiations.

Millinery and similar articles are of a light and bulky nature, running packed for shipment by express somewhat less than three pounds per cubic foot, and it is generally admitted this class of goods should carry a higher classification than ordinary merchandise. This principle is recognized in the Canadian Freight Classification, while present Condition of Carriage No. 16 of the Express Classification in a measure also has the effect of applying charges higher than first class on goods subject to the rule in question. The present rule, however, is not altogether satisfactory, and in some ways does not produce the desired results. The rule is inconsistent, inasmuch as it permits the handling of paper-wrapped packages at actual weight, while requiring a higher basis of weights for similar goods packed in cartons, and in some instances the express charge on goods in cartons or paper boxes measuring 50 inches or less, exterior measurement, when shipped in quantity, is greater than if the containers were larger and measured over 50 inches, in which event the conventional weights prescribed by Condition of Carriage No. 16 would apply and the weights aggregated, instead of each container being charged for as a separate shipment at actual weight.

Since January 1, 1928, when the so-called Package Tariff (present schedule C.R.C. No. E.T. 1076) came into effect a number of shippers have been dividing their shipments into small parcels in order to obtain the benefit of the package rates. Under existing conditions, in some instances the express charge is less when such packages are tied or fastened together, while in other instances the charge is lower when shipped separately. This is confusing to both shippers and express employees alike.

It is our view that the scale of conventional weights covered by Condition of Carriage No. 16 should be cancelled, and that millinery, artificial flowers, feathers, bonnets, hats, hat frames, straw goods, etc., be classified at one and one-half times first class rating. This will not affect the charges on the smaller packages subject to the so-called Package

Tariff (C.R.C. No. E.T. 1076), and in a general way will not increase the charges on shipments of millinery, etc., packed in cartons—as a matter of fact in some instances it will result in a reduction. The effect of the change proposed, however, will be to increase the charges on millinery, etc., packed in wooden containers, which heretofore has been carried at actual weight on the basis of the first class rate.”

Briefly, it is contended by the Express Traffic Association that by reason of the introduction in recent years of the use of containers of a type not in general use at the time the present classification provisions were prescribed, Conditions of Carriage 16 gives rise to discrimination, as well as anomalies, hence the application for its cancellation and the establishment of a uniform rating on the articles in question when shipped in any one of the three containers, namely, fibreboard or strawboard cartons, wooden crates, or wirebound wooden crates.

With regard to the cartons, the evidence put in by Mr. Ham, and which is not controverted by those opposing the application, indicates that charges based on the present conventional weights approximate the proposed rating of one and one-half times first class at actual weight, so that there will, in reality, be no increase in the total charges obtained by the express companies on these articles when shipped in cartons, but when shipped in the wooden crates or wirebound crates, which, at present, are charged first class actual weight, the proposal means an increase of 50 per cent.

No serious objection is taken to the rating proposed for these goods shipped in cartons. Mr. Smith of the Montreal Board of Trade, representing about twenty firms in the millinery and hat business at Montreal, stated:—

“Figures have been taken out, and I think almost everyone agrees that one and a half times first class on the corrugated containers as compared with the present method of calculating the charges will not result in any increase to the shipping public. One and a half times first class on the year’s business will work out just about the same as the present estimated or conventional weights. So that the people I represent have no serious objection to a classification rating of one and a half times first class on millinery and hats in corrugated containers.”

Mr. Marshall, representing the Toronto Board of Trade and interested shippers at that point, stated with regard to the provisions now governing on these goods in cartons:—

“They have now been in effect since 1911, and fairly satisfactory I think. Personally I have not heard any complaints from shippers in regard to them.”

He also stated with respect to the present use of the crates and the difference in basis of charges thereon:—

“I have no hesitation in saying that the situation is rather a difficult one for the express companies.”

The provision for these articles shipped in cartons was, after conference and agreement between the express companies and the principal shippers, prescribed by the Board and has been in force for twenty years without objection by the shippers. So far as relates to the shipments in cartons, what is proposed in the form of a change in rating and cancellation of the conventional weights, is in the nature of a substitution, leaving the tolls on these packages approximately the same as at present. If this rating is reasonable on the cartons, and it has been so considered for twenty years and is not now objected to, the real question for determination on the evidence here placed on record, is whether or not it is reasonable to authorize the same rating when the same articles are

shipped in crates. The matter must be considered from the standpoint of the conditions surrounding the carriage of the articles by express in the types of container already described. What evidence is there that such a rating is reasonable? What evidence is there that such a rating is not reasonable, or showing that there is some distinct characteristic surrounding the carriage of the same goods in crates sufficient to justify the present spread in the charges as between cartons and crates?

With regard to the last question, the evidence is exiguous. It has been suggested that as the express companies have been handling crates at the present rating for years, such rating should be considered as satisfactory to them. This statement seems to be adequately met by the fact that for the past ten years the express companies have been submitting various proposals and held several conferences with the shippers looking to a modification in the classification and an increase in the charges on the crated package.

The only argument advanced by many of those opposing the application is that it will result in a substantial increase in their charges, with no evidence submitted bearing on the merits of the proposed rating from any other standpoint. The reasonableness of a classification rating on any given article cannot be determined merely by a showing of the effect in increased revenue accruing to the carriers thereby.

The Vancouver Board of Trade stated that, while the proposed rating was for the whole of Canada, British Columbia traffic would bear the greatest burden on account of being the greatest distance from the Canadian producing points. This is a general statement which is applicable to any other, or, in fact, all express rates from eastern Canadian points, and has no real relevancy to the reasonableness *per se* of a classification rating. They also stated that the first class express rates from eastern Canadian points are higher than from eastern United States points, and as competition with the United States is keen, an increase in the charges on shipments from eastern Canadian points would give an advantage to United States manufacturers. They gave some rate comparisons based on the rate per 100 pounds, but that is not the unit of shipment as the bulk of shipments range from 6 to 50 pounds as shown in the appendices C, D, and E, hereto. Their submission relates to shipments in crates rather than cartons, and apparently fails to take into consideration the fact that on shipments moving from United States points, the crates are subject to conventional weights as compared with actual weight from Canadian points. There must also be considered in this connection, the proposed change in classification applicable on shipments from United States points as later referred to herein.

Submissions of practically the same character as above set out, were also made at Edmonton and Winnipeg by those opposing this application. The Hudson's Bay Company, Winnipeg, in addition to advancing similar submissions to those above mentioned, stated that millinery cannot be properly packed for shipment in packages of 15 pounds or less in order to obtain the benefit of the special competitive rates published in Mr. Ham's Tariff C.R.C. No. E.T.-1110. This tariff publishes, with respect to packages of the dimensions and weights therein prescribed, namely, maximum weight limit 15 pounds and 92 inches lineal measurement (length and girth combined); low rates established to meet the competition of the parcel post, and Mr. Ham had stated that shippers were, in numerous cases, dividing their shipments into small packages to secure the benefit of these low rates. While the Hudson's Bay Company may not have handled shipments in this manner, the record contains statements from certain witnesses that shipments have been so handled, and this is also borne out by the record of actual shipments moving as shown in Appendix E hereto as well as the evidence given at Toronto by the Traffic Inspector of the Express Traffic

Association. Packages of millinery coming under the provisions of this tariff will not be in any way affected by the change in classification here proposed and will be paying a lower toll than charged before the tariff in question was first established in 1928.

The Hudson's Bay Company also submitted that inasmuch as the special competitive tariff on packages up to 15 pounds, established with the object of competing with the parcel post, was voluntarily published by the express companies, it must be assumed that the rates therein are profitable, in view of which an increase in rating cannot be justified. The Railway Act contains specific provision authorizing a reduced rate on traffic handled to meet competitive conditions, and it has been held in numerous decisions of the Board that comparisons between competitive rates so established and normal rates, is no evidence of the reasonableness of normal rates *per se*. Such comparison and contention cannot be controlling or germane in considering the reasonableness of the classification rating here in issue.

At the final hearing in Ottawa, the question not having been elsewhere referred to, Mr. Smith, of the Montreal Board of Trade, stated:—

"I would like to impress upon the Board that while millinery has been referred to here almost exclusively, and we will admit that millinery as a rule is very light and bulky, this proposed change also involves men's hats, which I consider should be in a different class altogether from what is ordinarily termed millinery, light and bulky artificial flowers and that sort of thing."

However, he did not put in evidence any data showing the difference in weights, and the Board has no information on this point, except what can be gleaned from Appendices C and E hereto. Appendix E shows contents of actual shipments moving as therein listed, and contains 22 items described as men's hats. Appendix C hereto, shows weight per cubic foot of the said packages, and only three of the 22 cases weigh more than 3 pounds per cubic foot, the others ranging from 2.2 to 2.8 pounds, and in two cases, 3 pounds per cubic foot. In a number of cases shown in the same statement, the weight of millinery was also over 3 pounds per cubic foot. This does not indicate, therefore, any difference in weight as between the men's hats and the other classes of millinery, justifying any difference in treatment.

Objections were also filed by a number of the manufacturers of the corrugated cartons, the basis of the objection being that under Condition of Carriage 16, there is provision for these containers up to 100 inches exterior measurement, and its cancellation would, under Condition of Carriage 27, limit the size of carton to 90 inches, as well as increase, in some cases, the resistance required (pounds per square inch, Mullen Test). Mr. Ham, by letter of March 28, 1930, Appendix A hereto, submitted a modification of the regulations governing containers, by an added footnote to the millinery and millinery goods item in the Classification, which the express companies had agreed to in conference with parties interested, to meet the views of the millinery shippers who used cartons, as well as the carton manufacturers, in connection with the features objected to. In substance, this amendment restores the conditions existing under Condition of Carriage 16 with respect to the measurement and resistance applicable to cartons. Letters are on file from the Toronto and Montreal Boards of Trade to the effect that these changes are acceptable to their members.

Objection was also made by the Canadian Wirebound Boxes, Limited, who manufacture wirebound boxes and crates, also corrugated and paper cartons and boxes. Their objection relates to the proposed change insofar as it results in an increase in the charges on the articles here in question when shipped in wirebound crates. Summarizing their submission, it is to the effect that the wirebound crate is a more satisfactory container for the shippers as it will

stand two and one-half to five times greater strain than the corrugated carton, consequently it may be transported at much less risk to the contents, practically eliminating claims; that the wirebound crate will carry a great deal more weight on top of it than the carton; that wirebound crates are approximately 30 per cent more expensive than corrugated cartons, so that if they take the same rating it is feared it will result in shippers using the carton instead of the crate. From the record it appears that through care in handling and the construction of a better and stronger type of carton, claims on cartons have been negligible in recent years. Accepting the submission that substantially constructed crates, as well as wooden boxes, are, generally speaking, containers that will stand greater strain than cartons, the situation is that cartons are in very general use, both for movements in express and freight service. Very comprehensive regulations have been prescribed and published after experience and careful tests, setting out the manner in which these containers must be constructed for the carriage of articles of various descriptions and weights.

In freight service it is provided by rule 1 of the Canadian Freight Classification, that when the requirements and specifications therein provided for fibreboard, pulpboard, or double-faced corrugated strawboard containers are complied with, the ratings applicable on articles in wooden boxes will also apply on the same articles shipped in cartons. To this general rule, there are a few exceptions specified in individual items. The same articles in wooden crates are, in a great many cases, rated the same as in boxes or cartons, although there are numerous exceptions, and when such exceptions occur, the crated package takes a higher rating than the box or carton. In the Canadian Freight Classification, trimmed hats, in both cartons and crates, are rated three times first class; hats untrimmed, in both cartons and crates, are rated double first class. Feathers, millinery, artificial flowers, foliage or fruit, in boxes or cartons are rated double first class; if accepted in crates the rating is two and one-half times first class. In the Express Classification, there has been a somewhat limited provision for the acceptance of articles in cartons at the ratings shown in the Classification, but this has been broadened by an amendment to the Express Classification approved by Order No. 46135, dated January 15, 1931, to provide that unless otherwise specified in the individual items, articles packed in cartons will be accepted at the ratings applicable to articles packed in wooden boxes, provided that the specifications and requirements as to strength, as set out therein, are complied with. From the foregoing, it will be seen that the provision for the articles here in question, when shipped in crates, at a rating appreciably lower than applicable on the same goods shipped in cartons, is an exception and contrary to the general provision governing in both freight and express movements.

Some of the parties opposing this application made a statement in letters on file, that the express companies, in conference some time ago, stated they were not seeking any additional revenue, but endeavouring merely to eliminate the discrimination now existing in the charges made on the goods shipped in cartons as compared with the same goods shipped in crates, but there is no statement of the express companies on the record here before the Board to this effect, and their application and the evidence and argument adduced is for an increase in the rating on the crated package, with a change in conditions governing cartons which leaves the charges thereon approximately the same as at present.

At pages 3347 to 3351 of the record, Mr. Ham gave illustrations of anomalies existing under the provisions of Condition of Carriage 16. He pointed out that paper wrapped parcels are carried at actual weight, while the same goods packed in cartons are subjected to conventional weights; that owing to variations in the dimensions of different packages, inconsistencies exist with respect to the charges thereon, the result being that the present rule gives rise to

discrimination and causes confusion, frequently there is not sufficient time to measure the packages and apply the rule strictly. From the various examples put on the record by Mr. Ham, the following is quoted:—

“Take a shipment from Montreal, Que., to Vancouver, B.C., consisting of two cartons, 15 by 15 by 15 inches, with an actual weight of 5 pounds each; 2 cartons attached 15 by 15 by 30 inches, conventional weight 18 pounds at first class rate, \$16.20, the charges would be \$3.60.

“Then take two cartons shipped separately, actual weight 5 pounds each, at first class rate \$16.20, the charges would be \$1.20 each, or \$2.40 in all.

“Or take a similar shipment from Montreal, Que., to St. Johns, Que.; two cartons shipped separately, actual weight 5 pounds each at first class rate \$1.10, the charges will be 45 cents each or 90 cents in all, while two cartons attached of a conventional weight of 18 pounds at the first class rate \$1.10, the charges will be 55 cents.”

The reason for the anomalous situation above referred to is that conventional weights are applied on cartons over 50 to 100 inches, exterior measurement, while cartons under 50 inches are subject to actual weights, each carton being assessed as a separate shipment unless tied or fastened together. In some instances, as pointed out by Mr. Ham, the charges are less when the packages are fastened together when being forwarded to a certain destination, while, when the same packages are shipped to another destination, the charges are less when the packages are not fastened together. The change in classification now proposed will correct this situation.

The Express Traffic Association filed an exhibit, Appendix B hereto, showing the relative number of millinery shipments in cartons and in crates, made by shippers therein named from Toronto, and Montreal, the points at which the bulk of this business originates. It was stated these figures were supplied by the shippers. While informative, it does not enable any conclusion to be formed, with respect to the total volume of this traffic carried by the express companies, as to the percentage handled in cartons as compared with crates, because there may be considerable variation in the volume of the traffic shipped by the different firms named. Witness for the express companies, their traffic inspector located at Toronto, stated that out of Toronto the movement of millinery was approximately 75 per cent in cartons and 25 per cent in crates, this having been determined by him from personal observation at the depots and discussion with the vehicle men who pick up the goods and the millinery shippers. He was not in a position to give similar evidence with regard to shipments out of Montreal.

Appendix C hereto is a statement filed by Mr. Ham, representing actual shipments of millinery, etc., in cartons, and Appendix D hereto is a similar statement covering shipments in crates. It is stated that in the preparation of this data, the express companies took the run of traffic as it went through the express sheds, and did not pick out particular packages. Details are shown of the measurements in inches, cubic feet, actual weight and weight per cubic foot. The average weight of the shipments in cartons is 2.44 pounds per cubic foot; the shipments in crates average 2.43 pounds per cubic foot; in other words, the weight per cubic foot is practically the same on shipments in both types of package.

It was further stated that a check was made at Montreal and Toronto to determine the weight per cubic foot, in a general way, of ordinary express traffic and it was found that it averaged 24.96 pounds, or practically 25 pounds, per cubic foot. While such a test may not be conclusive, it does, however, clearly show that the average weight of the general run of express traffic is very much greater than in the case of the articles here in question. In the matter of the express classification rating on electric light bulbs, Volume 9, Board's Judgments

Orders and Rulings, page 395, there was before the Board an application for a reduction from double first to first class. It was shown that these electric light bulbs were light in weight compared with bulk, ranging from 2.59 pounds to 11.74 pounds per cubic foot, as compared with an estimate by the late Chief Traffic Officer, Mr. Hardwell, of 25 to 30 pounds per cubic foot for the general run of packages of all kinds by express. A rating of one and one-half times first class was prescribed by the Board. The Board has approved rating of one and one-half times first class on a number of other light and bulky articles specified in the express classification, for example:—

	Average weight per cubic foot
Gas mantles	5.28 pounds
Dress or dummy figures	4.69 "
Hair	2.5 "
Cardboard mailing tubes	2.4 "

Appendix E hereto is a statement filed by Mr. Ham, taking shipments of millinery goods in cartons as contained in Appendix C hereto, showing point of shipment, destination, first class express rate, measurement, contents, actual weight, charges at actual weight, charges at one and one-half times first class on actual weight, and charges at the present conventional weights. The statement covers 101 shipments and shows that the total charges thereon at rating of one and one-half times first class on actual weight would be \$175.20 as compared with \$172.16 under the present conventional weights. Representatives of the shippers also stated their investigation indicated that on the corrugated containers, one and one-half times first class at actual weight on the year's business would work out just about the same as the present conventional weights, and as already stated herein, there is really no objection raised to the proposed classification rating of one and one-half times first class on millinery and hats in corrugated containers.

With regard to the representations made at sittings of the Board in Western Canada concerning competition from United States points, rates from New York having been particularly stressed, Mr. Ham stated at the Montreal hearing that if the Board authorized rating of one and one-half times first class, it was their intention to have the same rating established in the Exceptions to Classification C.R.C. No. 113, applying on international traffic from the United States to Canada, and he later wrote the Board on June 30, 1930, as follows:—

"At the hearing in Montreal on June 6 in connection with the application of the Express Traffic Association for a revision of the classification of millinery and millinery goods, applicable within Canada, the Deputy Chief Commissioner suggested that we obtain from the Railway Express Agency that company's concurrence in the proposed classification of millinery so as to provide the same classification basis for international traffic as asked for on intra-Dominion shipments of millinery.

"In line with this suggestion of the Board, the matter was taken up with the Traffic Manager of the Railway Express Agency, and under date of June 27 he has advised me as follows:—

"The Railway Express Agency concurs in the proposed rating of one and one-half times first class on millinery and millinery goods between points in the Dominion of Canada, submitted under Supplement No. L to Express Classification for Canada No. 7.

"In addition, if this rating is sanctioned and published as applicable to traffic moving between points within the Dominion of Canada, Railway Express Agency agrees to establish the same rating on international traffic through Supplement to Exceptions to Classification I.C.C. No. 151, C.R.C. 113, effective on the same date that such increased rating becomes effective within Canada."

From this it will be noted that the Railway Express Agency are quite willing to adopt on international traffic the proposed rating of one and one-half times first class on millinery and millinery goods, as proposed for millinery between points within the Dominion of Canada, as per Supplement 'L' to Express Classification for Canada No. 7."

This action would be in line with what has previously been done with respect to other articles. For example, in the Express Classification for Canada, the rating on electric light bulbs is one and one-half times first class as already referred to above. In the Official Express Classification, applicable within the United States, these articles take rating of first class. In the Exceptions to Official Express Classification, C.R.C. No. 113, applying on international traffic between the United States and Canada, electric light bulbs are provided with rating of one and one-half times first class. Incandescent gas mantles are in the same category, also radio receiving tubes, bulbs, or valves, and radio loop aerials. There are also other items that are not here enumerated.

Appendix F hereto, is a statement filed by Mr. Ham showing a comparison of charges on millinery in crates from Toronto, Montreal and New York to points in Western Canada. Details are given covering a number of actual shipments from Toronto, also showing what the charges would be on the same shipments moving from Montreal and New York. The last two columns show the present charges and the charges if based on one and one-half times first class on actual weight. Mr. Ham stated that practically all the millinery goods arriving in Canada from the United States by express are packed in cartons and are at present charged first class on actual weight, so that what is proposed, on international shipments, will mean an increase in the charges thereon, and he stated the result would be to place the Canadian manufacturers in a much better situation, from the standpoint of competition in so far as it is affected by transportation charges, than at present exists. No evidence was put in showing the extent of the United States importations, but from what is on the record, it may be inferred that it represents a small percentage of the total business. In this connection, Appendix C hereto shows a comparison of charges on millinery shipped in cartons from Toronto and New York to Montreal, Winnipeg, Edmonton and Vancouver. There is shown the present charges and the charges at proposed rating of one and one-half times first class on actual weight, and a summary of the statement is as follows:—

To	From Toronto, Ont.		From New York, N.Y.	
	Present charges	Proposed charges at 1½ t 1st class on actual weight	Present charges	Proposed charges at 1½ t 1st class on actual weight
	\$	\$	\$	\$
Montreal.....	12 55	13 83	15 99	22 68
Winnipeg.....	32 20	30 64	27 54	40 00
Edmonton.....	42 55	39 60	36 79	53 90
Vancouver.....	55 35	50 44	37 69	55 26
Total.....	142 65	134 51	118 01	171 84

It was recognized when Condition of Carriage 16 was prescribed, that this light and bulky traffic occupied a great deal more space in express cars than it was entitled to in proportion to tolls paid, consequently a basis of increased charge thereon was authorized, but which is still disproportionate, treating the matter solely from the standpoint of its displacement space. For example, it

is shown that the average weight of the articles here under consideration is approximately 2.44 pounds per cubic foot; that the weight of the general run of express traffic averages well over 20 pounds per cubic foot. These articles occupying 10 cubic feet of space average a weight of 25 pounds. On the general run of express traffic at an average weight of 20 pounds per cubic foot, 10 cubic feet weigh 200 pounds. There is shown below the first and second class express rates from Toronto to the points specified, the charges on ten cubic feet of these articles weighing approximately 25 pounds at rating of one and one-half times first class, and in comparison therewith, charges on first and second class express traffic also occupying 10 cubic feet of space at an average weight of 20 pounds per cubic foot:—

From Toronto to	1st class rate per 100 lbs.	2nd class rate per 100 lbs.	25 lbs 1½— 1st class rate	200 lbs. 1st class rate	200 lbs. 2nd class rate
	\$	\$	\$	\$	\$
Montreal.....	2 70	1 85	1 50	5 40	3 70
Quebec.....	3 80	2 60	1 95	7 60	5 20
Sarnia.....	1 90	1 30	1 20	3 80	2 60
Winnipeg.....	8 90	6 20	3 83	17 80	12 40
Calgary.....	11 90	8 25	4 95	23 80	16 50
Edmonton.....	11 90	8 25	4 95	23 80	16 50
Vancouver.....	15 95	11 05	6 45	31 90	22 10

When Condition of Carriage 16 was established, the express traffic here under consideration was moving in the containers for which the conventional weights were prescribed. It subsequently developed that the same traffic could be shipped in crates, and although when so shipped is practically just as bulky, first class rating could be obtained on this method of shipment under the terms of the classification, consequently a material reduction in charges obtained, especially on the long haul traffic to Western Canada where crates now appear to be in pretty general use. It was only natural, and indeed proper, that shippers should take advantage of this condition. This, however, was a situation not in contemplation when Condition of Carriage 16 was established, and, in effect, results in a lower charge than was originally intended for application on this particular traffic. This, therefore, strips of much of its force such weight as might be given to the argument, and the only one advanced by many opposing the application, that the rating applied for should not be authorized on the crated package merely because it will result in an "increase" in charges. As already stated herein, the reasonableness of the classification rating cannot be determined merely by a showing of the effect in increased revenue accruing to the carriers thereby.

With regard to values, there is very little information on the record, and it would seem that it would be a difficult matter to get at, with any conclusiveness, on account of the wide range in prices. Witness representing a manufacturer at Montreal stated their cheapest hats ranged from \$18 to \$21 per dozen, and the most expensive, as high as \$35 per hat; that the proportion of the cheap to the dear hats would be about 75 per cent; that he had no idea as to the average value; that the retail price varies appreciably; that they saw a \$35 hat sold in one place for \$95 and in another place the same hat sold for \$40.

On the record here, however, the situation is that the same goods are being shipped in cartons and crates; they are extremely light and bulky; the gross weight per cubic foot is practically the same in both cases; that the conditions surrounding their handling and carrying by express are alike. Rating of one and one-half times first class on shipments in cartons is substantially in accord with the provisions of Condition of Carriage 16 prescribed by the Board in

1910, and is considered as being a reasonable rating and not objected to. The present spread in charges as between the carton and crated package is not warranted by any difference existing in their transportation characteristics, and is contrary to the general provisions covering goods in these types of containers in both express and freight movements. On the record, the Board considers the proposed changes in classification have been justified and should be authorized. Had these crates been in general use for shipments of millinery at the time Condition of Carriage 16 was prescribed, and the same evidence now adduced concerning them then before the Board, the same provision for both types of containers would have then been directed.

For the reasons above set out, the Express Traffic Association of Canada is hereby authorized to amend Express Classification No. 7 by the complete cancellation of the scale of conventional weights covered by Condition of Carriage 16, and the publication of rating of one and one-half times first class at actual weight on feathers (millinery); flowers, foliage or fruit, artificial; hat or bonnet frames; hats; millinery and millinery goods; and strawgoods; with the provision for footnote to the item covering millinery and millinery goods as set out in Appendix "A" hereto. The changes herein authorized will eliminate the anomalies, reference to which has been made herein, existing under the present provisions of Condition of Carriage 16, and also remove the discrimination existing with respect to these goods when shipped in different types of containers, by providing a uniform rating thereon at actual weight. Upon receipt of revised proof of proposed supplement "L" prepared in the terms hereof, order will issue approving same.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, March 6, 1931.

APPENDIX "A"

THE EXPRESS TRAFFIC ASSOCIATION OF CANADA

MONTREAL, QUE., March 28, 1930.

Refer to File No. 2308-1.

R. RICHARDSON, Esq.,
Asst. Secretary and Registrar,
Board of Railway Commissioners,
Ottawa, Ont.

DEAR SIR:

Classification of Millinery and Millinery Goods.

Subsequent to the filing of proposed Supplement No. "L" to Express Classification for Canada No. 7 with the Board of Railway Commissioners on January 20, 1930—your file 4397.98—we have continued our negotiations with some of the trade bodies with a view to, so far as possible, arriving at some agreement on the various points at issue, and I am pleased to advise the Board that we have been successful to a certain degree.

The express companies are willing to make certain adjustments in proposed Supplement "L", and to meet the views of the millinery shippers who use cartons, as well as the carton manufacturers, we will authorize this type of container up to 100 inches exterior measurement. To provide for this, it is proposed to add the following footnote to item 17, page 27, Millinery and Millinery Goods, namely:—

"*Millinery and Millinery Goods* must be boxed or crated.

"Fibreboard or corrugated strawboard cartons over 100 inches or wooden crates over 120 inches, exterior measurement, will not be taken.

"Strawboard or paper boxes (not corrugated), not over 70 inches exterior measurement, may be accepted, provided that two or more such

containers must be securely fastened together, and if the combined package is over 70 inches exterior measurement, must be boxed or crated.

"(Exterior measurement means length, width and height added together.)

"'Crated' means that all sides and ends of the goods must be protected by wooden slats or strips, nailed, screwed or wired together, making a framework strong enough to hold its contents and to permit of its being handled and stowed in vehicles or cars on or under other freight without damage to crate or contents. The sides, top and bottom of the crate must be provided with a sufficient number of slats, not more than six inches apart, to hold the contents firmly in place and to protect them from contact with other freight.

"Crates lined with fibreboard or corrugated strawboard having resistance of 175 pounds per square inch (Mullen Test) will be accepted, provided the slats are not more than twelve inches apart. The fibreboard or corrugated strawboard lining must be nailed to the crate on the inside.

"Cartons must comply with Condition of Carriage No. 27, except that cartons complying with the following specifications will also be accepted:

"The outer facing not less than .016 of an inch in thickness, having a resistance of not less than 85 pounds to the square inch (Mullen Test), and the inner facing not less than .016 of an inch in thickness, having a resistance of not less than 65 pounds to the square inch (Mullen Test), the combined board having a resistance of not less than 175 pounds to the square inch (Mullen Test), the exterior measurement not to exceed 100 inches, and the gross weight of the carton and contents not to exceed 50 pounds.

"When 'two cover' style of carton is used, and the exterior measurement of such carton exceeds 70 inches, and the weight of the package exceeds 30 pounds, the lap edges of both top and bottom covers shall be reinforced with wood veneer or fibreboard, the fibreboard not less than .06 of an inch in thickness, such reinforcement shall be firmly glued, wired or taped to the lap edges of the covers. Where more than one 'two cover' style of carton is used and the individual cartons are less than 70 inches exterior measurement, but tied together make a package over 70 inches exterior measurement, the top of the upper carton and the bottom of the lower carton should be reinforced the same as if it were one carton exceeding 70 inches."

It might be explained that the term "boxed" referred to in the rule suggested would also include cartons, in accordance with the proposed change in Condition of Carriage No. 26, covered by Supplement "M" to Express Classification for Canada No. 7 filed with the Board of Railway Commissioners for approval on February 5, 1930.

We have also agreed to delete the rating of one and one-half times first class from item 6, page 23, Feathers (Millinery); item 21, page 24, Hat or Bonnet Frames; and item 23, page 30, Straw Goods; and to add a reference note opposite each item reading:

"See Millinery and Millinery Goods, page 27, item 17."

As I understand the situation, with these changes in proposed Supplement "L" the only point at issue will be the rating itself, that is—whether millinery and millinery goods, artificial flowers, foliage or fruit, and hats should be classified first class or at one and one-half times first class.

Yours truly,

CC. Mr. Geo. Brown,
Mr. T. Marshall,
Mr. J. K. Smith.

(Sgd.) C. N. HAM,
Chairman.

APPENDIX "B"

STATEMENT Showing Relative Number of Millinery Shipments in Cartons and
in Crates
FROM TORONTO, CNT.

Shipper	Cartons	Crates
	per cent	per cent
American Hat Co.....		100
J. D. Ivey Co.....	90	10
J. C. Green Co.....	80	20
Geo. Goulding & Sons.....	75	25
Chicago Millinery Co.....	90	10
C. H. Starr.....	100	
Bremner Hat Co.....	90	10
Canton Hat Co.....	100	
Standard Hat Co.....	100	
B. H. Packard Co.....	100	
Abbot Bros.....	100	
Canadian Hat Co.....	100	
Vyse Sons & Co.....	100	
A. E. Lock, Rep. Acme Hat.....	100	
Palter & Sons.....	100	

FROM MONTREAL, P.Q.

Charlebois Hat Co.....	100	
Jewel Hat Co.....	100	
Buckley Dronin Co.....	100	
New York Hat Co.....	20	80
Debenhams Ltd.....	10	90
Imperial Hat Co.....	100	
Piko Hat Co.....	80	20
Victoria Hat Co.....	75	25
Vyse & Son.....	50	50
R. L. Taylor Ltd.....	60	40
Acme Hat Co.....	10	90
Canadian Hat Mfg. Co.....	60	40

APPENDIX "C"

SHIPMENTS of Millinery in Cartons

Measurements in inches	Cubic feet	Actual weight in pounds	Weight per cubic foot at actual weight (in lbs.)
38 x 15 x 34.....	11.21	25	2.2
25 x 15 x 23.....	4.99	14	2.8
13 x 14 x 34.....	3.58	12	3.3
23 x 15 x 14.....	2.79	7	2.5
22½ x 25 x 14½.....	4.72	9½	2.0
22½ x 25 x 14½.....	4.72	9½	2.0
22½ x 25 x 14½.....	4.72	9½	2.0
31 x 34 x 29.....	17.68		
26 x 16 x 31.....	7.46	57	2.26
27 x 39 x 17.....	10.35	24	2.3
13 x 14 x 33.....	3.47		
13 x 14 x 33.....	3.47		
62½ x 10½ x 15½.....	5.88		
62½ x 10½ x 15½.....	5.88		
62½ x 10½ x 15½.....	5.88		
62½ x 10½ x 15½.....	5.88		
62½ x 10½ x 15½.....	5.88	6	0.8645
62½ x 10½ x 15½.....	5.88		
62½ x 10½ x 15½.....	5.88		
33 x 13 x 14.....	3.47		
24 x 8½ x 10.....	1.18	70	1.75

SHIPMENTS of Millinery in Cartons—*Continued*

Measurements in inches	Cubic feet	Actual weight in pounds	Weight per cubic foot at actual weight (in lbs.)
27 x 17½ x 38.....	10.39	18	1.7
38 x 40 x 15.....	13.19	37	2.8
40 x 36 x 15.....	12.5	32	2.6
40 x 36 x 15.....	12.5	32	2.6
24½ x 18 x 17½.....	4.46	8	1.8
23 x 17 x 24.....	5.43	11	2.0
25 x 17 x 42.....	10.33	25	2.4
38 x 15 x 42.....	13.85	35	2.5
22 x 21½ x 18½.....	5.06	18½	3.7
37 x 30 x 15.....	9.63	35	3.6
37 x 30 x 15.....	9.63	29	3.0
23½ x 17½ x 19.....	4.52	9	1.99
23½ x 17½ x 19.....	4.52	9	1.99
26 x 15½ x 37.....	8.63	30	3.5
14 x 14 x 62.....	7.0	16	2.28
24½ x 14½ x 10.....	2.05	35	2.44
24½ x 14½ x 10.....	2.05		
24½ x 14½ x 10.....	2.05		
24½ x 14½ x 10.....	2.05		
24½ x 14½ x 10.....	2.05		
24½ x 14½ x 10.....	2.05		
24½ x 14½ x 10.....	2.50		
53 x 35 x 18.....	19.32	105	1.08
53 x 35 x 18.....	19.32		
53 x 35 x 18.....	19.32		
27 x 17 x 29.....	7.7	16	2.07
27 x 17 x 20.....	5.31	12	2.2
18 x 18 x 18.....	3.37	8	2.3
31 x 31 x 27.....	15.02	35	2.3
71 x 13 x 13.....	6.94	20	2.88
19 x 19 x 39.....	8.14	22	2.7
23 x 23 x 23.....	7.04	40	2.06
23 x 23 x 23.....	7.04		
21 x 21 x 21.....	5.36	9	2.67
18 x 18 x 18.....	3.37		
24 x 15 x 10.....	2.08	5	2.4
25 x 26 x 45.....	16.92	70	2.06
25 x 26 x 45.....	16.92		
18 x 18 x 18.....	3.37	7	2.0
37 x 17½ x 27.....	10.11	18	1.8
15½ x 15½ x 14.....	1.92	11	2.86
15½ x 15½ x 14.....	1.92		
41 x 28 x 21.....	13.95	22	1.57
17 x 17 x 12.....	2.0	4	2.0
15½ x 16 x 12.....	1.72	5	2.9
28 x 18 x 27.....	7.87	15	1.9
37½ x 34 x 17½.....	12.91	32	2.5
22½ x 19 x 16.....	3.95	24½	2.0
22½ x 19 x 16.....	3.95		
22½ x 19 x 16.....	3.95		
27 x 17 x 32.....	8.5	21	2.5
35 x 19 x 25.....	9.62	20	2.1
36 x 17½ x 17½.....	6.38	13	2.0
25 x 14½ x 12½.....	2.62	7	2.6
19 x 16½ x 15½.....	2.81	5	1.7
24 x 18 x 18.....	4.5	11	2.4
27 x 27 x 25.....	10.54	22	2.1
20 x 20 x 20.....	4.63	11	2.4
26 x 27 x 27.....	10.96	20	1.8
20 x 20 x 21.....	4.86	7	1.4
13 x 15 x 25.....	2.82	7	2.5
15 x 37 x 37.....	11.88	28	2.4
15 x 26 x 41.....	9.25	23	2.5
15 x 49 x 25.....	10.63	28	2.6
15 x 49 x 25.....	10.63	27	2.5
15 x 31 x 37.....	9.95	25	2.5
24 x 15½ x 20.....	4.30	12	2.7
24 x 15½ x 20.....	4.30	12	2.7
24 x 15½ x 20.....	4.30	12	2.7
28 x 22 x 30.....	10.69	24	2.2
18 x 16½ x 11.....	1.89	7	3.7

SHIPMENTS of Millinery in Cartons—*Continued*

Measurements in inches	Cubic feet	Actual weight in pounds	Weight per cubic foot at actual weight (in lbs.)
18 x 16½ x 11.....	1.89	7	3.7
38 x 15 x 31.....	10.22	25	2.4
23 x 21 x 27.....	7.54	14	1.9
19 x 18½ x 19½.....	3.96	8	2.0
18 x 18 x 37.....	6.93	15	2.2
19½ x 16½ x 12.....	2.23	5	2.2
18 x 24 x 19.....	4.75	12	2.5
25 x 13 x 17.....	3.19	6	1.9
23 x 20 x 22.....	5.85	14	2.4
24 x 18 x 18.....	4.5	10	2.2
18 x 18 x 24.....	4.5	8	1.7
36 x 18 x 18.....	6.75	16	2.3
24 x 18 x 19.....	4.75	12	2.5
37 x 36 x 15.....	11.56	27	2.3
40 x 25 x 15.....	8.63	20½	2.4
37 x 40 x 15.....	12.84	33	2.6
36 x 34 x 18.....	12.75	32	2.5
37 x 26 x 17.....	9.46	18	1.9
37 x 34 x 14.....	10.19	24	2.3
34 x 14 x 13.....	3.58	11	3.0
34 x 25 x 29.....	14.26	35	2.3
25 x 23 x 14.....	4.65	12	2.5
34 x 14 x 13.....	3.53	11	3.0
29 x 26 x 26.....	11.34	19	1.6
29 x 26 x 26.....	11.34	19	1.6
26 x 14½ x 14½.....	3.16	3½	1.1
27 x 21 x 15.....	4.92	13½	2.6
26 x 18½ x 36.....	10.0	30	3.0
26 x 18½ x 36.....	10.0	30	3.0
35 x 16 x 18.....	5.83	12	2.1
17 x 18 x 16.....	2.83	5	1.7
29 x 29 x 21.....	10.22	30	2.9
29 x 29 x 21.....	10.22	30	2.9
27 x 22 x 11.....	3.78	20	5.2
27 x 22 x 11.....	3.78	20	5.2
29 x 27 x 10.....	4.53	15	3.3
35 x 18 x 39.....	14.21	24	1.7
20 x 17 x 12.....	2.36	5	2.1
41 x 25 x 33½.....	19.87	50	2.5
36 x 22 x 29.....	13.29	29	2.17
24 x 22 x 29.....	8.86	22	2.47
26 x 17 x 24.....	6.13	20	3.2
20 x 17 x 24.....	4.72	9	1.9
18 x 18 x 24.....	4.50	10	2.2
20 x 20 x 21.....	4.86	11	2.26
20 x 20 x 20.....	4.63	10	2.16
19 x 19 x 34.....	7.1	12	1.69
22½ x 22½ x 29½.....	8.64	18	2.08
35 x 35 x 25.....	17.72	38	2.14
35 x 35 x 18.....	12.76	24	1.88
18 x 23 x 25.....	5.98	10	1.67
33 x 22 x 27.....	11.34	40	3.54
25 x 15 x 16.....	3.47	9	2.59
27 x 17½ x 19.....	5.19	35	1.92
27 x 17½ x 19.....	5.19		
27 x 17½ x 29.....	7.92		
51 x 21 x 21.....	13.0	25	1.9
19½ x 17 x 11.....	2.11	5	2.36
19½ x 17 x 11.....	2.11	5	2.36
19½ x 17 x 11.....	2.11	5	2.36
19½ x 17 x 11.....	2.11	5	2.36
19½ x 17 x 11.....	2.11	5	2.36
35 x 19 x 25.....	9.62	14	1.45
60 x 12 x 12.....	5.0	18	3.6
65 x 14 x 13½.....	7.1	19	2.67
30 x 25 x 15.....	6.51	46	7.06
26 x 16 x 32.....	7.7	17	2.2
25½ x 16 x 25½.....	6.02	10	1.67
25 x 15½ x 13.....	2.91	63	3.9
16 x 37 x 38½.....	13.16		
29 x 13 x 13.....	2.83		
29 x 13 x 13.....	2.83	16	1.88
29 x 13 x 13.....	2.83		

SHIPMENTS of Millinery in Cartons—*Concluded*

Measurements in inches	Cubic feet	Actual weight in pounds	Weight per cubic foot at actual weight (in lbs.)
33 x 25 x 14.....	6.68	19	2.8
38½ x 35 x 15.....	11.70	45	3.84
34 x 18 x 16.....	5.66	9	1.59
19½ x 17 x 20.....	3.84	8	2.0
34½ x 34½ x 17½.....	12.05	27	2.24
14½ x 12½ x 21.....	48.45	207	4.27
	(22 cartons)		
12 x 14 x 34.....	3.30	8	2.4
12 x 14 x 34.....	3.30	8	2.4
12 x 13 x 31.....	2.79	8	2.8
14 x 12 x 30.....	2.91	6	2.0
35 x 13 x 13.....	3.42	8	2.3
35 x 13 x 13.....	3.42	8	2.3
17 x 17 x 25.....	4.18	10	2.3
12 x 12 x 44.....	3.67	22	6.0
12 x 15 x 29.....	3.02	7	2.3
51 x 14 x 14.....	5.78	15	2.6
14 x 12 x 34.....	3.30	9	2.7
12 x 14 x 33.....	3.21	8	2.5
25 x 15 x 29.....	6.29	12	1.9
Total.....	1,288.26	3,140.5	2.44 (average)

APPENDIX "D"

SHIPMENTS of Millinery in Crates

Measurements in inches	Cubic feet	Actual weight in pounds	Weight per cubic foot at actual weight (in lbs.)
37 x 31 x 13.....	8.62	28	3.24
47½ x 46½ x 16½.....	20.77	56	2.69
47 x 37 x 13½.....	13.58	41	3.01
48 x 44 x 13.....	15.88	41	2.58
57 x 33 x 19.....	20.68	48	2.32
21 x 20 x 19.....	4.61	10	2.16
49 x 30 x 27.....	22.96	50	2.17
51 x 43 x 16.....	20.3	57	2.80
43 x 41 x 21.....	21.42	50	2.33
43 x 41 x 21.....	21.42	48	2.24
56 x 19 x 16.....	9.85	16	1.62
30 x 19 x 15½.....	5.11	8	1.56
46 x 25 x 13.....	8.65	20	2.31
52 x 43 x 14.....	18.1	42	2.31
70 x 30 x 19.....	23.09	40	1.73
56 x 33 x 18.....	19.25	50	2.59
25 x 24 x 13.....	4.51	12	2.66
42 x 20 x 16.....	7.77	13½	1.73
70 x 16 x 20.....	12.96	18	1.38
52 x 27 x 17.....	13.81	32	2.31
34 x 16 x 35.....	11.0	42	3.82
18 x 19 x 47.....	9.3	15	1.61
19 x 19 x 26.....	5.43	10	1.84
48 x 12 x 40.....	13.33	45	3.37
34 x 34 x 22.....	14.71	25	1.69
18 x 17 x 27.....	4.78	10	2.09
36 x 14 x 37.....	10.79	37	3.42
42 x 36 x 22.....	19.25	31	1.61
40 x 38 x 31.....	27.26	52	1.90
27 x 25 x 18.....	7.0	33	4.71
37 x 32 x 22.....	15.07	44	2.91
46 x 38 x 14.....	14.16	53	3.74

SHIPMENTS of Millinery in Crates—Continued

Measurements in inches	Cubic feet	Actual weight in pounds	Weight per cubic foot at actual weight (in lbs.)
26 x 20 x 12.....	3.61	24	6.64
44 x 32 x 16.....	13.0	29	2.23
30 x 38 x 26.....	17.15	37	2.15
36 x 32 x 14.....	9.33	24	2.57
40 x 40 x 13.....	12.0	27	2.25
24 x 24 x 24.....	8.0	24	3.00
36 x 28 x 14.....	8.16	25	3.06
41 x 33 x 12.....	9.39	33	3.51
50 x 30 x 16.....	13.88	33	2.37
43 x 32 x 16.....	12.74	32	2.51
45 x 40 x 13.....	13.54	41	3.02
36 x 36 x 36.....	27.0	45	1.66
38 x 34 x 22.....	16.45	46	2.79
34 x 32 x 18.....	11.33	40	3.53
27 x 23 x 20.....	7.19	22	3.06
45 x 34 x 15.....	13.28	42	3.16
41 x 38 x 12.....	10.82	43	3.97
44 x 40 x 14.....	14.26	39	2.73
32 x 34 x 20.....	12.59	38	3.02
52 x 36 x 12.....	13.0	47	3.62
66 x 15½ x 53.....	31.38	76	2.42
38 x 46 x 15.....	15.17	38	2.5
32 x 25 x 13.....	6.02	20	3.32
42½ x 32 x 42.....	33.06	69	2.09
14 x 37 x 45.....	13.49	38	2.82
15 x 40 x 25.....	8.68	25	2.88
52 x 13½ x 40.....	16.25	40	2.46
52 x 53 x 14½.....	23.13	54	2.33
38 x 13½ x 30.....	8.91	30	3.37
37 x 48 x 13½.....	13.87	54	3.89
33 x 30 x 24.....	13.75	29	2.1
24 x 16 x 16.....	3.55	6	1.7
43 x 23 x 22.....	12.59	29	2.3
33 x 31 x 24.....	14.20	30	2.1
33 x 31 x 24.....	14.20	29	2.0
26½ x 15½ x 38.....	9.03	22	2.4
21 x 20 x 56.....	13.61	20	1.5
27 x 44 x 16.....	11.0	25	2.3
33 x 31 x 36.....	21.31	45	2.1
16½ x 16½ x 37.....	5.82	14	2.4
22½ x 23 x 43½.....	13.17	30	2.2
33½ x 23 x 43½.....	19.40	40	2.0
26 x 23 x 44.....	15.22	40	2.6
25 x 16 x 16.....	3.70	6	1.6
25 x 16 x 16.....	3.70	7	1.9
25 x 16 x 16.....	3.70	9	2.4
27 x 19 x 48.....	14.25	40	2.8
60 x 20 x 18.....	12.50	17	1.3
35 x 26½ x 18½.....	9.92	26	2.62
43 x 29½ x 14½.....	10.64	30	2.81
38 x 18 x 17.....	6.72	19	2.8
56 x 26 x 26.....	21.91	65	3.0
36 x 55 x 18.....	20.62	50	2.42
25 x 18 x 36.....	9.37	25	2.66
39 x 37½ x 19.....	16.03	50	3.1
16½ x 16½ x 25.....	3.93	9	2.29
24½ x 33 x 32.....	14.97	27	1.8
22 x 21 x 44.....	11.76	25	2.1
16½ x 16½ x 25.....	3.93	9	2.29
24½ x 33 x 32.....	14.97	27	1.80
22 x 21 x 44.....	11.76	25	2.1
24½ x 33 x 32.....	14.97	28	1.87
24½ x 33 x 32.....	14.97	29	1.93
19½ x 39 x 42.....	18.48	36	1.94
37 x 37 x 18.....	14.26	40	2.8
28 x 15½ x 45.....	11.3	27	2.4
33 x 45 x 34.....	29.21	30	1.02
43 x 40 x 40.....	39.81	54	1.36
28 x 23 x 17.....	6.34	19	3.0
37 x 37 x 16.....	12.68	36	2.84
46 x 27 x 28.....	20.12	54	2.68
46 x 27 x 28.....	20.12	55	2.73
36 x 28 x 27.....	15.75	47	2.99

SHIPMENTS of Millinery in Crates—*Concluded*

Measurements in inches	Cubic feet	Actual weight in pounds	Weight per cubic foot at actual weight (in lbs.)
36 x 28 x 27.....	15.75	46	2.92
42 x 40 x 30½.....	29.65	54	1.82
42 x 40 x 30½.....	29.65	50	1.69
40 x 30 x 42.....	29.17	44.5	1.53
30 x 32 x 38.....	21.11	40	1.90
37½ x 37½ x 16½.....	13.43	36	2.68
31 x 42 x 40.....	30.13	46	1.53
31 x 42 x 40.....	30.13	49	1.63
31 x 42 x 40.....	30.13	50	1.66
28 x 29 x 34.....	15.97	45	2.8
24 x 17 x 28.....	6.61	20	3.0
24 x 35 x 20.....	9.72	27	2.8
24 x 35 x 20.....	9.72	27	2.8
37 x 33½ x 16½.....	11.83	40	3.4
34 x 23 x 19.....	8.59	22	2.6
34 x 23 x 19.....	8.59	20	2.3
22½ x 19 x 17½.....	4.33	11	2.5
22½ x 19 x 17½.....	4.33	11	2.5
37½ x 33½ x 16.....	11.48	40	3.4
16½ x 37½ x 33½.....	11.99	32	2.7
29 x 27½ x 45.....	20.76	53	2.6
34 x 29 x 28.....	15.97	50	3.1
34 x 29 x 28.....	15.97	50	3.1
34 x 29 x 28.....	15.97	50	3.1
35 x 26½ x 37.....	19.86	48	2.4
20 x 18 x 35.....	7.29	20	2.7
28½ x 27½ x 34.....	15.42	47	3.1
33½ x 28½ x 27.....	14.91	46	3.1
29 x 27½ x 45.....	20.76	58	2.79
33½ x 28½ x 27.....	14.91	46	3.1
29 x 28½ x 35.....	16.75	50	2.99
28 x 29 x 46.....	21.61	60	2.77
38 x 17 x 34.....	12.71	100	3.35
28 x 31 x 34.....	17.07		
28 x 35 x 29.....	16.45	40	2.43
28 x 35 x 29.....	16.45	40	2.43
33 x 28 x 27.....	14.43	47	3.25
20 x 24 x 19.....	5.27	11	2.1
53 x 20 x 47.....	28.83	46	1.59
34½ x 34 x 19.....	12.89	32	2.48
34½ x 34 x 19.....	12.89	32	2.48
34 x 34 x 19.....	12.71	28	2.2
35 x 35 x 20.....	14.17	28	2.0
36 x 27 x 48.....	27.0	55	2.0
37 x 19 x 35.....	14.23	30	2.10
34 x 19 x 35.....	13.08	68	2.24
46 x 19 x 34.....	17.19		
23 x 19 x 17½.....	4.42	10	2.26
23 x 19 x 17½.....	4.42	10	2.26
17½ x 19 x 11½.....	2.21	6	2.71
51 x 34 x 19½.....	19.56	41	2.09
51 x 45 x 19.....	25.23	50	1.98
44½ x 27 x 26.....	18.07	45	2.5
34 x 19 x 35.....	13.08	26	2.0
34 x 25 x 22½.....	11.07	25	2.2
44 x 34 x 25.....	21.64	45	2.07
52 x 37 x 19½.....	21.71	45	2.07
16½ x 38 x 34.....	12.33	35	2.8
25 x 34 x 44.....	21.64	45	2.07
25 x 34 x 44.....	21.64	43	1.98
19½ x 37 x 35.....	14.61	28	1.9
19½ x 37 x 35.....	14.61	30	2.05
19½ x 52 x 37.....	21.71	46	2.12
34½ x 19 x 23½.....	8.92	22	2.46
34 x 17½ x 19.....	6.54	16	2.44
28 x 34 x 29.....	15.97	46	2.88
28 x 34 x 29.....	15.97	45	2.81
34 x 19 x 17.....	6.36	18	2.8
23 x 16 x 17.....	3.62	11	3.04
34 x 25 x 19.....	9.35	30	3.2
39 x 36 x 15.....	12.18	96	7.9
Total.....	2,536.10	6,152	2.43 (Average)

APPENDIX "E" Light and Bulky Goods in Cartons and Paper Boxes

From	To	First class express rate	Measurements (inches)	Contents	Actual weight	Con- ven- tional weight	Charges at actual weight	Charges at 1 $\frac{1}{2}$ t on actual weight	Charges at conven- tional weight
Brockville, Ont.....	Edmonton, Alta.....	1215	38x15x34	Hats.....	25	45	335	503	505
"	Saskatoon, Sask.....	1105	25x15x33	"	14	20	190	285	255
"	"		13x14x34	"	12	12 $\frac{1}{2}$	120 $\frac{1}{2}$	120 $\frac{1}{2}$	120 $\frac{1}{2}$
Ottawa, Ont.....	Winnipeg, Man.....	930	23x15x14	"	7	7 $\frac{1}{2}$	55 $\frac{1}{2}$	55 $\frac{1}{2}$	55 $\frac{1}{2}$
"	Montreal, P.Q.....	160	22 $\frac{1}{2}$ x25x14 $\frac{1}{2}$	"	9 $\frac{1}{2}$	20			
"	"		22 $\frac{1}{2}$ x25x14 $\frac{1}{2}$	"	9 $\frac{1}{2}$	20	75	113	115
"	"		22 $\frac{1}{2}$ x25x14 $\frac{1}{2}$	"	9 $\frac{1}{2}$	20			
Toronto, Ont.....	"	270	31x34x29	Men's hats.....	57	30	175	263	250
"	"		26x16x31	"	24	45	65	98	80
Three Rivers, P.Q.....	"	135	27x39x17	Hats.....	6	3 $\frac{1}{2}$	60	80 $\frac{1}{2}$	80 $\frac{1}{2}$
Bridgeburg, Ont.....	"	325	13x14x33	Art. flowers.....		3 $\frac{1}{2}$			
"	"		62 $\frac{1}{2}$ x10 $\frac{1}{2}$ x15 $\frac{1}{2}$	"		45			
"	"		62 $\frac{1}{2}$ x10 $\frac{1}{2}$ x15 $\frac{1}{2}$	"		45			
"	"		62 $\frac{1}{2}$ x10 $\frac{1}{2}$ x15 $\frac{1}{2}$	"		45			
"	"	325	62 $\frac{1}{2}$ x10 $\frac{1}{2}$ x15 $\frac{1}{2}$	Art flowers.....	70	45	235	353	943
"	"		33x13x14	"		18			
Quebec, P.Q.....	Montreal, P.Q.....	190	24x8 $\frac{1}{2}$ x10	Hats.....	18	45	65	98	110
Toronto, Ont.....	"	270	27x17 $\frac{1}{2}$ x38	Men's hats.....	37	60	135	203	175
"	"	270	38x40x15	"	32	60	190	285	324
"	"		40x36x15	"	32	60			
Hamilton, Ont.....	"	295	40x36x15	Ladies' hats.....	8	18	60	90	95
Toronto, Ont.....	"	270	24 $\frac{1}{2}$ x18x17 $\frac{1}{2}$	Art. flowers.....	11	20	65	90	90
Montreal, P.Q.....	Toronto, Ont.....	270	23x17x24	"	25	45	175	263	284
"	"		25x17x42	"	35	60			
St. Leonards, N.B.....	Montreal, P.Q.....	295	38x15x42	Ladies' hats.....	18 $\frac{1}{2}$	45	95	143	95
Guelph, Ont.....	"	295	22x21 $\frac{1}{2}$ x18 $\frac{1}{2}$	"	35	45	210	315	270
"	"		37x30x15	"	29	45			
Iberville, P.Q.....	"	110	37x30x15	Hats.....	9	18	55	83	65
"	"		23 $\frac{1}{2}$ x17 $\frac{1}{2}$ x19	"	9	18			
Toronto, Ont.....	"	270	23 $\frac{1}{2}$ x17 $\frac{1}{2}$ x19	Men's hats.....	30	35	110	165	120
"	"	270	26x15 $\frac{1}{2}$ x37	Ladies' hats.....	32	45	120	180	140
"	"		37 $\frac{1}{2}$ x34x17 $\frac{1}{2}$	"	24 $\frac{1}{2}$	18			
Rimouski, P.Q.....	"	270	22 $\frac{1}{2}$ x19x16	Millinery.....		18	100	150	170
"	"		22 $\frac{1}{2}$ x19x16	"		18			
Sherbrooke, P.Q.....	"	160	27x17x32	Hats.....	21	35	75	113	80

Toronto, Ont.	35x19x25	270	35x19x25	35x19x25	20	35	90	135	120
Desbarats, Ont.	30x17½x17½	440	30x17½x17½	30x17½x17½	13	30	95	143	160
Guelph, Ont.	25x14½x12½	295	25x14½x12½	25x14½x12½	7	7½	55½	55½	40½
Brantford, Ont.	19x16½x15½	295	19x16½x15½	19x16½x15½	5	5½	40½	40½	90
Toronto, Ont.	24x18x18	270	24x18x18	24x18x18	11	18	65	98	95
"	27x27x25	135	27x27x25	27x27x25	11	18	35	75	385
"	20x20x20	1035	20x20x20	20x20x20	11	18	235	353	90
Regina, Sask.	26x27x27	270	26x27x27	26x27x27	7	7	55	83	324
Montreal, P.Q.	20x20x21	135	20x20x21	20x20x21	28	45	186	279	110
"	13x15x25	640	13x15x25	13x15x25	23	45	90	135	250
"	15x37x37	295	15x37x37	15x37x37	27	45	140	210	235
"	15x49x25	160	15x49x25	15x49x25	25	45	60	90	75
"	15x31x37	135	15x31x37	15x31x37	12	18	45	68	60
"	24x15½x20	270	24x15½x20	24x15½x20	12	18	100	150	50½
"	24x15½x20	270	24x15½x20	24x15½x20	12	18	50½	50½	135
"	28x22x30	295	28x22x30	28x22x30	7	7	60	90	110
"	18x16½x11	160	18x16½x11	18x16½x11	25	45	45	68	60
"	38x15x31	135	38x15x31	38x15x31	15	30	55	83	120
"	23x21x27	350	23x21x27	23x21x27	12	20	50½	50½	165
"	19x18½x19½	380	19x18½x19½	19x18½x19½	6	6½	110	165	135
"	18x18x37	515	18x18x37	18x18x37	14	20	60	90	75
"	19½x16½x12	215	19½x16½x12	19½x16½x12	10	18	65	98	110
"	18x24x19	190	18x24x19	18x24x19	8	18	30	98	90
"	25x13x17	315	25x13x17	25x13x17	16	30	65	98	95
"	23x20x22	295	23x20x22	23x20x22	27	45	75	113	413
"	24x18x18	270	24x18x18	24x18x18	33	35	255	383	140
"	38x18x24	755	38x18x24	38x18x24	32	45	120	180	290
"	36x18x18	160	36x18x18	36x18x18	18	35	180	270	176
"	24x18x19	160	24x18x19	24x18x19	24	45	130	195	65
"	37x36x15	270	37x36x15	37x36x15	11	20	55	83	65
"	40x25x15	270	40x25x15	40x25x15	35	45	55	80½	284
"	37x40x15	270	37x40x15	37x40x15	11	20	140	210	90
"	36x34x18	270	36x34x18	36x34x18	19	45	65	98	250
"	37x26x17	270	37x26x17	37x26x17	19	45	90	263	135
"	37x34x14	160	37x34x14	37x34x14	3½	15	175	263	135
"	34x14x13	160	34x14x13	34x14x13	13	20	90	263	135
"	34x25x29	270	34x25x29	34x25x29	30	45	90	263	135
"	25x23x14	270	25x23x14	25x23x14	12	25	90	263	135
"	34x14x13	270	34x14x13	34x14x13	12	25	90	263	135
"	29x26x26	270	29x26x26	29x26x26	12	25	90	263	135
"	29x26x26	270	29x26x26	29x26x26	12	25	90	263	135
"	26x14½x14½	270	26x14½x14½	26x14½x14½	12	25	90	263	135
"	27x21x15	270	27x21x15	27x21x15	12	25	90	263	135
"	26x18½x36	270	26x18½x36	26x18½x36	12	25	90	263	135
"	35x16x18	270	35x16x18	35x16x18	12	25	90	263	135
"	17x18x16	270	17x18x16	17x18x16	5	15	90	263	135

APPENDIX "F"

COMPARISON of Charges on Millinery in Crates from Eastern Canada and from New York City to Points in Western Canada

From	To	First Class express rate	Measurements (inches)	Total measurement	Actual weight	Conventional weight	Present charges	If based on 1½ t 1 actual weight
Toronto, Ont.	Vancouver, B.C.	1595	24½ x 33 x 32	89½	28	.....	505	758
Montreal, Que.	"	1620	24½ x 33 x 32	89½	28	.....	515	773
New York, N.Y.	"	1370	24½ x 33 x 32	89½	28	50	712	705
Toronto, Ont.	Winnipeg, Man.	890	19½ x 39 x 42	100½	36	.....	380	570
Montreal, Que.	"	970	19½ x 39 x 42	100½	36	.....	410	615
New York, N.Y.	"	820	19½ x 39 x 42	100½	36	70	597	600
Toronto, Ont.	Vancouver, B.C.	1595	33 x 31 x 36	100	45	.....	2058	3087
			16½ x 16½ x 37	70	14	.....	
			22½ x 23 x 43½	89½	30	.....	
			33½ x 23 x 43½	100	40	.....	
			33 x 31 x 36	100	45	.....	
Montreal, Que.	"	1620	16½ x 16½ x 37	70	14	.....	2090	3135
			22½ x 23 x 43½	89½	30	.....	
			33½ x 23 x 43½	100	40	.....	
			33 x 31 x 36	100	45	.....	
New York, N.Y.	"	1370	16½ x 16½ x 37	70	14	60	2543	2673
			22½ x 23 x 43½	89½	30	50		
			33½ x 23 x 43½	100	40	60		
Toronto, Ont.	Winnipeg, Man.	890	33½ x 23 x 43½	100½	53	.....	505	758
Montreal, Que.	"	970	29 x 27½ x 45	101½	53	.....	555	833
New York, N.Y.	"	820	29 x 27½ x 45	101½	53	70	597	705
Toronto, Ont.	Calgary, Alta.	1190	21 x 20 x 56	97	20	.....	270	405
Montreal, Que.	"	1230	21 x 20 x 56	97	20	.....	275	413
New York, N.Y.	"	1245	21 x 20 x 56	97	20	60	772	442
Toronto, Ont.	Winnipeg, Man.	890	26 x 23 x 44	93	40	.....	380	570
Montreal, Que.	"	970	26 x 23 x 44	93	40	.....	410	615
New York, N.Y.	"	820	26 x 23 x 44	93	40	60	517	600
Toronto, Ont.	Calgary, Alta.	1190	35 x 35 x 20	90	28	.....	385	578
Montreal, Que.	"	1230	35 x 35 x 20	90	28	.....	400	600
New York, N.Y.	"	1245	35 x 35 x 20	90	28	.....	400	600
Toronto, Ont.	Edmonton, Alta.	1190	35 x 27 x 48	110	55	50	647	652
Montreal, Que.	"	1230	35 x 27 x 48	110	55	.....	675	1013
New York, N.Y.	"	1300	35 x 27 x 48	110	55	.....	695	1043
Toronto, Ont.	Portage la Prairie, Man.	1910	34½ x 19 x 23½	77	22	70	932	1095
Montreal, Que.	"	990	34½ x 19 x 23½	77	22	.....	255	383
New York, N.Y.	"	835	34½ x 19 x 23½	77	22	.....	275	413
			34½ x 19 x 23½	77	22	40	412	412

APPENDIX "C"

COMPARISON of Charges on Millinery in Cartons

Dimensions of Carton (inches)	FROM										TO									
	Toronto, Ont.		New York, N.Y.		Toronto, Ont.		New York, N.Y.		Toronto, Ont.		Edmonton, Alta.		Edmonton, Alta.		Vancouver, B.C.		Vancouver, B.C.		New York, N.Y.	
	Combined Measurement (inches)	Actual Weight	Conventional Weight	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight	Present Charges	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight	Present Charges	Proposed Charges at 1½ t 1st Class on Actual Weight
20 x 20 x 20.....	60	8	18	90	90	122	172	210	165	182	262	270	203	192	350	240	192	350	277	277
12 x 27 x 32.....	76	23	35	120	150	142	202	335	383	282	412	445	495	422	585	645	437	645	645	645
12 x 14 x 28.....	55	6	15	50	50	107	150	50	50	147	210	75	75	147	80	80	147	80	210	210
10 x 18 x 26.....	64	12	20	80	80	127	180	80	80	212	307	140	140	267	155	155	267	155	390	390
12 x 26 x 22.....	64	15	20	90	113	127	180	210	255	212	307	270	323	302	350	413	302	350	442	442
12 x 26 x 22.....	68	20	25	100	135	142	202	255	315	252	367	330	405	347	510	525	367	510	540	540
21 x 28 x 22.....	88	20	45	140	135	142	202	425	315	252	367	560	405	347	740	525	367	740	540	540
61 x 31 x 36.....	81	20	45	140	135	142	202	425	315	252	367	560	405	347	740	525	367	740	540	540
21 x 28 x 22.....	81	20	45	140	135	142	202	425	315	252	367	560	405	347	740	525	367	740	540	540
27 x 37 x 37.....	81	27	45	140	165	162	232	425	333	317	465	578	405	477	740	525	477	740	705	705
11 x 37 x 50.....	82	24	45	140	150	142	202	425	333	282	412	560	495	422	740	645	437	740	645	645
20 x 34 x 16.....	56	8	18	90	90	122	172	210	165	182	262	270	203	192	350	240	192	350	277	277
11 x 23 x 19.....	53	10	15	75	90	122	172	170	195	182	262	215	233	217	275	293	217	275	315	315
Total.....	.....	.....	.....	1255	1383	1599	2268	3220	3064	2754	4000	4255	3969	3679	5535	5044	3769	5535	5535	5535

Application of Guy Tombs, Limited, Montreal, representing the Anglo-Canadian Pulp and Paper Mills, Limited, for ruling of the Board concerning customs bonding charges on carload shipments of newsprint paper shipped from Quebec to New York for export, during the period January 26 to May 3, 1928.

File 24602.16

BY THE BOARD:

This matter has been presented to the Board by written submissions filed by the applicant and replies thereto by the New York Central Railroad Company and the Canadian National Railways. There is involved an account for \$157 presented to the shippers by the New York Central Railroad Company, representing a bonding charge of \$1 on each of 157 shipments of newsprint paper, in carloads, moving from Quebec to New York for export during the period January 26 to May 3, 1928.

The issue submitted to the Board for a ruling concerns a question of tariff interpretation. Canadian National Railways Tariff C.R.C. No. E-663 publishes class and commodity rates from stations on the Canadian National Railways and connecting lines to Atlantic ports for export, and the New York Central Railroad is a participating carrier therein. Effective May 21, 1928, in Supplement No. 83 to the said tariff, there was published an export rate of 33½ cents per 100 pounds on newsprint paper, in carloads, from Quebec to New York for export, but prior to this date and during the period above mentioned, there was no specifically published export rate and the domestic rate of 34 cents per 100 pounds published in Canadian National Railways Tariff C.R.C. No. E-1196 applied. The only feature in controversy is the bonding charge. In the tariff last named applying on domestic traffic, there is a provision reading: "Customs and bonding charges are not included in the rates shown herein" and it is this provision that is relied upon by the New York Central Railroad Company in presenting its account to the shippers.

At the time these shipments moved, Tariff C.R.C. No. E-663, publishing the export rates, contained the following rules:—

- "2. On export traffic, from Canadian points handled via United States ports:—
 - (a) On carload shipments or less than carload shipments of 5,000 pounds or over, the bonding charges will be assumed by the lines interested.
 - (b) On less than carload shipments of less than 5,000 pounds, the bonding charges will, in each case, be in addition to the freight rate."
- "7. Shipments which are not consigned in shipping order or bill of lading for export ordered for exportation after arrival at Montreal, Quebec, St. John, West St. John, Halifax, Portland, New London, Boston, East Boston, New York, Weehawken, Baltimore or Philadelphia, will be subject to the rates, rules and regulations applicable on domestic traffic."
- "19. On shipments for export, when no export rates are published in tariff or supplements, apply the domestic class or commodity rates plus terminals as specified in rule 4, pages 4 and 5 of tariff (except that when domestic class rates are applied to St. John, N.B., or Halifax, N.S., no additional charges will be made for terminals), and when domestic class rates are applied to traffic via West St. John, N.B., 3 cents per 100 pounds only will be added."

It will be noted that while on the traffic here in question there was no specific commodity rate published, by rule 19 it was provided that the domestic rates would apply on shipments for export when no export rates are published, and by rule 2 it is provided that: "on export traffic, from Canadian points handled

via United States ports, the bonding charges on carload shipments will be assumed by the lines interested." In other words, by the literal wording of rule 19 the domestic "rate" applies also as an export "rate" on shipments for export where no specific export rate is published, and rule 2 states clearly and without qualification that "on export traffic" the bonding charges will be assumed by the lines interested. Rule 19 authorizes the domestic rate on shipments for export, but does not stipulate "The rates, rules and regulations applicable on domestic traffic" as in the case of the wording of rule 7 of the tariff above quoted, so that in the view of the Board, under the rules of the tariff above quoted, provision is made for the bonding charges to be assumed by the carriers on this export traffic. If that is not the clear provision of the rules in question, then the wording thereof is certainly ambiguous, and the principle that has been followed by the Board with respect to tariffs, where ambiguous, would govern, namely: "Tariffs, when ambiguous, if they can reasonably and properly be read in ease of the shipper, following the usual practice are so construed", Volume 11, Board's Judgments, Orders and Rulings, page 477.

RULING

Upon consideration of the submissions filed, and the reading of the tariff rules governing, the Board rules and declares that with respect to the shipments here in question the bonding charges should be assumed by the lines interested.

OTTAWA, March 11, 1931.

Application of the citizens of Saint Raymond, P.Q., for the construction of a new station in their parish, on the Quebec-Chicoutimi branch of the Canadian National Railways.

File 37066

Heard at Quebec, November 18, 1930.

JUDGMENT

COMMISSIONER STONEMAN:

On October 31, 1929, the residents of the parish of Saint Raymond, P.Q., located on the Quebec-Chicoutimi branch of the Canadian National Railways, petitioned the Board, requesting the construction of a new station at that point.

On November 16, 1930, an inspector of the Board, in company with Mr. Simeon Delisle, M.P., the mayor of the parish and other representative citizens, made an inspection on the ground, and on November 19, 1930, the parties were heard, at a sittings of the Board held in the city of Quebec. Subsequent to the hearing, a joint inspection was made on January 22, 1931, by an Operating Officer and a Division Engineer of the Board. The Board has, therefore, before it very complete information regarding the conditions alleged and complained of.

The applicants' complaint alleges that the present station building is a very old one, which no longer meets the requirements of the locality; that it is not properly located for present day needs; that the facilities are obsolete and inadequate; that there is need for additional waiting room accommodation and facilities; that a heated store-room should be provided for express parcels; that a modern and hygienic heating system should be installed; that there is great inconvenience to those having to approach the railway station with a vehicle or auto to discharge or take on passengers from the station platform; that there is no shelter for passengers getting on or off trains; that there is lack of accommodation for taking freight to and from the freight sheds; that the freight shed is in a bad state of repair, and that a room specially for baggage should be supplied.

The citizens urge the necessity for a new station at a location about 200 feet to 250 feet west of St. Jean avenue, or about 150 feet west of the present station, and a relocation of the freight shed, in order to remedy the conditions complained of.

The railway company submitted a plan for remodelling the present station, which will provide a ladies' waiting room 15 feet by 28 feet, a general waiting room 18 feet by 28 feet, an agent's office 14 feet by 18 feet, two lavatories, one for each waiting room, a 6-foot passage between the two waiting rooms leading to the ticket wicket, and also a baggage room 10 feet by 28 feet, all within the main roof and walls of the proposed station. The railway company also shows that provision has been made for a concrete cellar under a portion of the station to provide a furnace room, coal bin, etc., and a central heating plant. It was urged by the railway company that the remodelling of the station, as proposed and shown on the plan filed with the Board, would reasonably meet the applicants' request in so far as the station is concerned, and be a saving in cost of approximately \$12,000 to the railway company. Correspondence has been carried on, subsequent to the hearing of this matter, regarding the relocation and extension of the freight shed, and the railway company has, by letter dated March 4, 1931, expressed its willingness to meet the wishes of the applicants in this regard. In substantiation of their undertaking, I quote the following letter from the railway company to the Board:—

“Replying to your letter of the 7th ultimo; will you please note that we are agreeable to remodelling the present station and relocating and extending the freight shed at St. Raymond, placing the freight shed north of the team track and slightly relocating the team track.”

A careful perusal of the submissions as filed together with the facts disclosed at the hearing of the application makes it apparent to me that the present station, when remodelled, would provide facilities sufficient and satisfactory for the parish of St. Raymond. The remodelling of the present station would mean a conservation in cost, to the railway company, of approximately \$12,000, which curtailment in expenditure should, under present financial conditions, be given the fullest consideration.

A reference was also made by the Board's Inspector in his report to the Board, dated November 16, 1929, that the approaches to the cars, freight shed and station are in bad condition, due to the ground being muddy and not covered with enough sand or cinders. I would recommend that the Board order the railway company to put in the necessary filling, either of gravel or cinders, to improve this condition, and this improvement should be included in and form part of the order.

The railway company have given their undertaking that they will repair, remodel, equip and enlarge the station in the manner shown on the plan filed, and will relocate and extend the freight shed north of the team track. This, to my mind, with the added improvement in the approaches, as previously referred to by me, will, satisfactorily take care of the applicants' complaint.

I therefore suggest that order issue, in terms of the foregoing.

OTTAWA, March 12, 1931.

Assistant Chief Commissioner McLean and Commissioner Norris concurred.

GENERAL ORDER No. 491

In the matter of the General Order of the Board No. 151, dated November 8, 1915, as amended by General Orders Nos. 179, 181, 191, 262, 444, and 450, dated respectively January 29, February 3, and May 26, 1917, May 8, 1919, June 20, 1927, and September 24, 1927, prescribing the Regulations Governing Baggage Car Traffic for the observance of every railway company within the legislative authority of the Parliament of Canada; And in the matter of the application of the Canadian Passenger Association, on behalf of railways operating lines in Canada, for an amendment to Rules 12 and 26 of the said Regulations.

File No. 23328

MONDAY, the 9th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon reading the application and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Regulations Governing Baggage Car Traffic be, and they are hereby, further amended as follows, namely:—

(1) Rule 12, as amended by the said General Order No. 444, to be struck out and the following substituted in lieu thereof:—

MISCELLANEOUS ARTICLES

Rule 12. (a) *To Destinations in Canada*, the following miscellaneous articles other than baggage will be checked and included in the weight of passengers' baggage, and carried at owner's risk, namely, tool chests, miners' and prospectors' packs, collapsible steamer chairs (roped); invalid chairs, cots, litters and stretchers (when for use of an invalid travelling on same train); unloaded guns in leather or wooden cases, saddles in bags, surveyors' tools, wrapped, except transits, levels, compasses, and other similar instruments liable to injury; personal baggage in bundles, when properly wrapped in canvas or other strong material (paper wrapping excepted), and securely roped; golf, cricket, baseball, or other club paraphernalia in closed receptacles; travellers' rugs, curling stones, snowshoes for personal use when properly tied together, tents and tent poles (not exceeding fifteen (15) feet in length), fishing rods properly encased, typewriters properly enclosed, and outboard motors when in trunks or other rigid containers having at least two flat sides opposite each other, and gasoline removed from tank.

(b) *To Destinations in Canada*, the following miscellaneous articles, other than baggage, will be checked upon payment of charge in accordance with current tariff, namely, invalid chairs, cots, litters and stretchers, when empty and used by invalid in opposite direction. Shipment need not be accompanied by passenger.

The carrier shall not be liable in respect of or consequent upon loss of, or damage or delay to, any of the articles specified, or any articles attached thereto, for any amount in excess of five dollars (\$5), whether such loss, damage, or delay is caused by, or results from the negligence of the carrier, its servants, or agents, or otherwise howsoever, unless a greater value is declared and extra charge paid at time of checking, in accordance with current tariff of the carrier.

(c) *To Destinations in the United States*, the following miscellaneous articles, other than baggage, will be checked and included in the weight of passengers' baggage, and carried at owner's risk, namely, tool chests, miners'

and prospectors' packs; invalid chairs, cots, litters and stretchers (when for use of an invalid travelling on same train); surveyors' tools, wrapped, except transits, levels, compasses, and other similar instruments liable to injury; personal baggage in bundles, when properly wrapped in canvas or other strong material (paper wrapping excepted), securely roped; golf, cricket, baseball, or other club paraphernalia in closed receptacles; travellers' rugs, curling stones, snowshoes for personal use when properly tied together, skis fastened together, fishing rods properly encased, typewriters properly enclosed, and outboard motors when in trunks or other rigid containers having at least two flat sides opposite each other, and gasoline removed from tank.

(d) *To Destinations in the United States*, the following miscellaneous articles, other than baggage, will be checked upon payment of charge in accordance with current tariff, namely, collapsible steamer chairs, roped; unloaded guns in leather or wooden cases, saddles in bags, invalid chairs, cots, litters and stretchers, when empty and used by invalid in opposite direction. Shipment need not be accompanied by passenger.

The carrier shall not be liable in respect of or consequent upon loss of, or damage or delay to, any receptacle containing any of the articles specified and the contents thereof, or any of such articles not contained in a receptacle, for any amount in excess of five dollars (\$5), whether such loss, damage, or delay is caused by or results from the negligence of the carrier, its servants or agents, or otherwise howsoever, unless a greater value is declared and extra charge paid at time of checking, in accordance with current tariff of the carrier.

(e) *To Destinations in Canada*, sportsmen's and campers' outfits in dunnage bags or medium sized boxes with proper handles including unloaded guns in leather or wooden cases, tents and tent poles (not exceeding fifteen (15) feet in length), and fishing rods properly encased, will be checked and included in the weight of passengers' baggage and carried at owner's risk, subject to the regular tariff regulations as to size and weight.

Provisions, when enclosed in wooden boxes of medium size and of sufficient strength to withstand ordinary handling, may be accepted and checked, subject to charge in accordance with current tariff. The carrier will not be liable in respect of, or consequent upon, any loss of or damage to any shipment of provisions for any amount in excess of twenty-five dollars (\$25), which sum shall be deemed to be the value of any such shipment, unless a greater value is declared and excess charge paid at time of checking, in accordance with current tariff.

Row boats, motor launches, gasoline, acetylene, coal oil, or liquids of any description, or articles of an explosive or inflammable nature, will not be accepted for carriage in regular or special baggage car service.

Carcasses of deer, boxes of fish, etc., must be handled by express.

(f) *To Destinations in the United States*, sportsmen's and campers' outfits for private hunting, fishing or camping parties, consisting of tent poles not exceeding fifteen (15) feet in length, tents, small bundles of bedding and folding cots when securely wrapped, roped, or strapped, also cooking utensils when in boxes or crates provided with handles, will be accepted and checked and charged for in accordance with current tariff.

The carrier will not accept a greater liability than twenty-five dollars (\$25) per passenger for any one or more receptacles, packages, or articles so checked and transported, unless a greater value is declared at time of delivery to carrier, and charges paid for such increased valuation in accordance with current tariff.

(2) Rule 26, subsection (a), as amended by the said General Order No. 444, to be struck out and the following substituted therefor, namely:—

Rule 26. (a) Any articles not specified in the foregoing rules shall not be carried in regular baggage service. When passengers fail to disclose nature of

articles offered for checking, and it develops en route or at destination that the transportation of such articles as baggage is not authorized herein, collection shall be made in accordance with current tariff.

Such property shall be entirely at the risk of the owner, and the carrier shall not be liable for loss of or damage or injury to the same, whether caused by or resulting from negligence of the carrier, its servants or agents, or otherwise howsoever.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46394

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 10th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner*

The Board orders: That the tolls published in Supplement No. 41 to Tariff C.R.C. No. E-1235, and in Supplement No. 6 to Tariff C.R.C. E-1242, and Supplement No. 23 to Tariff C.R.C. No. E-1243, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46400

In the matter of the complaint of James McDonnell & Company, of Montreal, Quebec, with respect to freight charges to the seaboard on grain and hay used as ships' supplies for feeding cattle.

File No. 26776.3

WEDNESDAY, the 11th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Montreal, March 10, 1931, the Canadian Freight Association being represented at the hearing, but no one appearing for the complainant company,—

The Board orders: That the complaint be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46419

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.12

FRIDAY, the 13th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 273 of Supplement No. 37 to Tariff C.R.C. No. E-4312 filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of those published in the said item 273 of Supplement No. 37 to Tariff C.R.C. No. E-4312, approved herein is, to all points, twenty-six cents per one hundred pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46415

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File 34822.2

MONDAY, the 16th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in Supplement No. 29 to Tariff C.R.C. No. E-1244, and in Supplement No. 11 to Tariff C.R.C. No. E-1256, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46425

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act.

File No. 34822.13.

TUESDAY, the 17th day of March, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders: That the tolls published in Tariff C.R.C. No. 859 filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 859 are as follows:—

To	Rates in cents per 100 lbs.
Saint John, N.B.....	21
South Bay to McAdam Junction, N.B.....	25
West Saint John, N.B.	22½
Russiangornis to Morrison, N.B.....	24
Fredericton, N.B.	23½
Barber Dam to Bonny River, N.B.....	25
St. George to Spruce Lake, N.B.....	22½
Cottrell to Debec, N.B.....	28
Woodstock, N.B.	24½
Upper Woodstock to Hartland, N.B.....	28
St. Leonards to Green River, N.B.....	26½
St. Basil to Edmundston, N.B.....	28½
Elmwood to Otis, N.B.....	28
Nashwaakis to South Devon, N.B.....	23½
Tobique Narrows to Three Brooks, N.B.....	31
Wapske, N.B.	24
Arbuckle, N.B.	31
Plaster Rock, N.B.....	24
Tinker, N.B.	31
1½ cents per 100 lbs. to be deducted.	
St. John, N.B.	21

The Dominion Atlantic proportion to be reported at 8·7 cents per 100 pounds. Normal proportion 10·9 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46430

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act.

File No. 34822.12.

TUESDAY, the 17th day of March, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board Orders: That the toll published in Supplement No. 21 to tariff C.R.C. No. E-4310 filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 2 of section 3 of the said Act.

And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 21 to Tariff C.R.C. No. E-4310, approved herein, is 21½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46431

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act.

File No. 34822.2.

TUESDAY, the 17th day of March, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders: That the tolls published in Supplement No. 17 to Tariff C.R.C. No. E-1250, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46432

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act.

Filed No. 34822.2.

WEDNESDAY, the 18th day of March, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders: That the tolls published in Supplement No. 25 to Tariff C.R.C. No. E-1255 and in Supplement No. 7 to Tariff C.R.C. No. E-1504, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS FOR THE
MONTH OF DECEMBER, 1930

Railway accidents153, involving 18 persons killed and 160 injured
Railway accidents at highway crossings.... 31, involving 9 persons killed and 42 injured

	Killed	Injured
Passengers.. . . . .	..	17
Employees..	7	125
Others..	20	60
	<u>27</u>	<u>202</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF NEW BRUNSWICK

No. of
Accidents

1 Sleigh.

PROVINCE OF QUEBEC

- 1 Automobile—Ran into side of train. Que. licence F-4786.
- 1 Automobile—Failed to stop for crossing. Que. licence 98156.
- 3 Horse-drawn vehicles.

PROVINCE OF ONTARIO

- 4 Automobile—Ran into side of train. Ont. licences CV-809; HS-804; H-6599; 18772-C.
- 1 Automobile—Reckless driving; driver under influence of liquor. Mich. licence 96675.
- 1 Automobile—Excessive speed of auto. Ont. licence H-7401.
- 1 Automobile—Auto driver attempted to cross tracks in face of watchman's stop signal. Ont. licence CD-86.
- 1 Automobile—Auto went through gates in lowered position. Ont. licence H-2401.
- 1 Automobile—Defective brakes; Ont. licence 40-889-C.
- 1 Automobile—Auto driver's hearing impaired. Ont. licence K-3124.
- 1 Automobile—Auto headlights not working. Ont. licence 19634-C.
- 4 Automobile—Ont. licences MS-328; 47872-C; MR-71; 37350-C.
- 2 Pedestrians.

PROVINCE OF MANITOBA

- 1 Automobile—Ran into side of train. Man. licence 29472.
- 3 Automobile—Man. licences M-54333; 65-407; 3-849.

PROVINCE OF SASKATCHEWAN

- 1 Automobile—Ran into side of train. Sask. licence 101-235.
- 1 School van.

PROVINCE OF ALBERTA

- 1 Automobile—Alta. licence 28-400.

PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—Ran into side of train. B.C. licence 36-355.

Of the 31 accidents at highway crossings six occurred at protected crossings and 25 at unprotected crossings. Sixteen of the accidents occurred during day-light hours and 15 during the night hours.

OTTAWA, March 13, 1931.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, April 15, 1931

No. 2

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Consideration of the matter of a trestle of the Nipissing Central Railway Company over Booth's Creek, in the Province of Quebec.

File 11014.36

Heard at Ottawa, September 29, 1930; Ottawa, February 12, 1931.

JUDGMENT

COMMISSIONER STONEMAN:

The matter involved in this complaint is one of alleged diversion of water from the Abitibi basin to the Ottawa watershed, to make possible the driving of logs from Dasserat lake to the Ottawa river waters, through Booth's creek, township of Dasserat, district of Temiscamingue, and province of Quebec, whereby it is contended that, as a result of such diversion in the flow of water, the banks of the gulley have become unstable, and erosion is rapidly eating into the embankments at about mileage 41.7, where a trestle of the Nipissing Central Railway crosses Booth's creek.

This complaint was first brought to the attention of the Board in the spring of 1930. Since that time submissions have been filed by representatives of the parties affected, and we have had the benefit of inspections made on the ground and reports from our engineers, prior to the hearings which took place in this matter.

The first hearing was held in Ottawa on September 29, 1930, and at the request of counsel for the J. R. Booth Company, Limited, was adjourned. The adjourned hearing, which was also held in Ottawa, took place on February 12, 1931. At both the hearings in this matter there appeared before us representatives of the J. R. Booth Company, Limited, the Nipissing Central Railway Company, the Quebec Streams Commission, the Northern Power and Paper Company, the Abitibi Power and Paper Company, the Department of Lands and Forests for the Province of Quebec, and the Department of Lands and Forests for the Province of Ontario.

It was alleged that in 1923 the J. R. Booth Company, Limited, erected a dam across the Kanasota river at the north end of Dasserat lake to divert the waters southward; and in the years 1924, 1925, and 1926 they erected certain dams across the point known as Booth's creek, at the south end of Berthemet lake, for the purpose of driving timber; that therefore they should be considered

a party interested and affected by any remedial works necessary to stabilize conditions at the point on Booth's creek where the Nipissing Central Railway Company's trestle crosses, and that they should be assessed at least a portion, if not all of the cost of such remedial works.

The J. R. Booth Company, Limited, admit in evidence before the Board that they constructed a dam across Kanasota river, at the north end of Dasserat lake, for the purpose of diverting the flow of water southward, and three other dams at a point known as Booth's creek, at the south end of Berthemet lake; one in May, 1924, which went out in three weeks; the second dam was started around the 1st of August of the same year (1924), and was finished on November 18, 1924. There was no fall drive that year, and this dam went out in the early spring of 1925; the third dam was started on March 25, 1925, and was completed early in May of 1926.

The J. R. Booth Company, Limited, contend, however, that they were on the ground lawfully and that, having completed their operations, they left the territory entirely in July, 1926. They further contend that, at the time they left the territory, the Nipissing Central Railway had not reached this point with its construction, but, as a matter of fact, were approximately twenty-one miles from this point, and that when the railway company reached this point with its construction, it saw conditions as they existed at that time.

The submissions filed show, in evidence, that the J. R. Booth Company, Limited, completed their operations in the district in 1926; that they notified the Department of Lands and Forests of the Quebec Government, through Mr. F. X. Lemieux, Deputy Minister of that department, that they had completed their operations, and the Quebec Government, in acknowledging the J. R. Booth Company's notification of surrender of its timber lease No. 629, stated that the domain had reverted to the Crown. Letters in substantiation of this fact were filed with the Board in terms of the following:—

“ OTTAWA, June 4, 1926.

“ F. X. LEMIEUX, Esq.,

Deputy Minister of Lands and Forests,
Quebec.

“ With reference to your account dated May 1 covering ground rent for season 1926-27 on timber limits held by us under licence from the Crown, we beg to advise you that we will not apply for renewal of licence No. 629 covering the south half of No. 2, range 5, block A, township of Dasserat, containing an area of 25 square miles, which licence will now revert to the Crown.”

(Sgd.) “ J. R. BOOTH CO., LTD.”

A communication was received, bearing date June 12 and signed by Mr. Henri Kleffer, Chief of the Forest Protection Service, acknowledging the J. R. Booth Company's letter, as quoted above, with regard to the timber concession having reverted to the Crown.

A letter was also received from Mr. F. X. Lemieux, Deputy Minister of Lands and Forests, as follows:—

“ QUEBEC, June 16, 1926.

“ J. R. BOOTH Co., LTD.,
Ottawa.

“ In reply to yours of the 11th instant abandoning your rights as licensee of timber berth No. 629, south half of No. 2, range 5, block A, in Dasserat, I beg to inform you that we accept same, and we are converting the same into a dominal forest.”

(Sgd.) F. X. LEMIEUX.”

Notes of Hearing, Vol. 580 (Pt. 4), p. 207.

The Booth Company contend further that the law dealing with the subject of lands and forests and the driving of timber in the province of Quebec has made it lawful to construct dams. This provision is embodied in section 32 of "An Act Respecting the Use of Watercourses and the Driving of Timber," Chapter 46, Division 5 of the Quebec Statutes. Section 32 thereof reads as follows:—

"It shall and always has been lawful to erect and maintain dams, slides, aprons, booms, gatelocks, or other necessary works, to facilitate the floating or transmission of timber, rafts or craft down such rivers, streams, lakes, ponds or creeks, to blast rocks, dredge or remove sand-banks, or to remove trees, shrubs, or other obstacles, without, however, doing any damage to such rivers, lakes, ponds, streams or creeks."

The J. R. Booth Company, Limited, therefore submit that, because of the fact that they had completed their operations and abandoned the district prior to the construction of the railway, they cannot be termed a party interested in, or affected by any remedial works necessary for the purpose of stabilizing conditions at the point known as Booth's creek.

From the facts disclosed in evidence, the letters filed by the J. R. Booth Company, Limited, to the Department of Lands and Forests for the Province of Quebec, and the department's letters in reply thereto, together with the provisions of section 32 of the Quebec statute, as quoted above, show clearly, to my mind, that the J. R. Booth Company, Limited, had taken the necessary steps to legally notify the Department of Lands and Forests for the Province of Quebec of the cancellation of the timber concession held by them, and that they had abandoned the territory and terminated their lease in the year 1926.

The question at issue, in my opinion, is only concerned with whether the J. R. Booth Company, Limited, can be considered a party interested in or affected by any remedial works constructed or to be constructed by the Nipissing Central Railway Company, and is the only point to be considered in the present application.

The J. R. Booth Company, Limited, have admitted the performance of their operations under lease from the Crown, in the construction of the dams at the times and places specified, which they used for the purpose for which these were constructed; they have established the fact that they notified the proper authorities that they were leaving and abandoning the district, and have letters of acknowledgment and acceptance from the Crown Lands Department of the Province of Quebec, admitting that the timber concession reverted to the Crown. The evidence shows clearly that their lease terminated prior to the time that the Nipissing Central Railway Company reached the point under discussion with its construction.

After a thorough and careful perusal of all the facts, I am of the opinion that the J. R. Booth Company, Limited, is not a party either interested in or affected by, or liable for, the cost of any remedial works that may be necessary to stabilize conditions at the point where the Nipissing Central Railway Company's trestle spans Booth's creek.

Order should issue dismissing the application.

OTTAWA, March 18, 1931.

Assistant Chief Commissioner McLean concurred.

Application of the Canadian National Railways under sections 181 and 256 of the Railway Act for permission (1) to construct a spur to serve the Rosedale Coal Company and Ernest Powell between Drumheller and Rosedale, in the Province of Alberta, (2) to cross with said spur the following road allowances: North and South, road allowance (not open and to be closed pending future public requirements) between N.W. Quarter 28 and N.E. Quarter 29-28-19-4; North and South road allowance (not open and to be closed pending future public requirements) between S.W. Quarter 32 and S.E. Quarter 31-28-19-4; East and West road allowance (not open and to be closed pending future public requirements) between N.W. Quarter 31-28-19 and S.W. Quarter Section 6-29-19 W. 4 M.; North and South road allowance (not open and to be closed pending future public requirements) between S.W. Quarter Section 6-29-19-4 and S.E. Quarter Section 1-29-20, W. 4 M.

File No. 22370.159

JUDGMENT

ASSISTANT CHIEF COMMISSIONER McLEAN:

The Canadian National Railway has made application to the Board under sections 181 and 256 of the Railway Act for permission

“(1) to construct a spur to serve the Rosedale Coal Company and Ernest Powell between Drumheller and Rosedale, in the province of Alberta;

“(2) to cross with the said spur the following road allowances:—

North and south road allowance (not open and to be closed pending future public requirements) between the N.W. $\frac{1}{4}$ of section 28 and the N.E. $\frac{1}{4}$ of section 29-28-19, W. 4 M.;

North and south road allowance (not open and to be closed pending future public requirements) between the S.E. $\frac{1}{4}$ of section 32 and the S.E. $\frac{1}{4}$ of section 31-28-19, W. 4 M.;

East and west road allowance (not open and to be closed pending future public requirements) between the N.W. $\frac{1}{4}$ of section 31-28-19 and the S.W. $\frac{1}{4}$ of section 6-29-19, W. 4 M.;

North and south road allowance (not open and to be closed pending future public requirements) between the S.W. $\frac{1}{4}$ of section 6-29-19 and the S.E. $\frac{1}{4}$ of section 1-29-20, W. 4 M.

“The construction of this trackage has been advertised in the *Drumheller Mail*, and I enclose copies of issues of this paper dated July 31, August 7 and August 14, 1930, and it has also been advertised in the issue of August 21, 1930, a copy of which will be forwarded to the Board as soon as received.

“The highway crossings have been approved by the Department of Public Works of Alberta and by the Municipal District of Mechechi No. 277, and their original letters of August 1 and August 13 respectively are enclosed herewith.

“I also enclose copy of a letter of June 24, 1930, from Ernest Powell and copy of one, dated June 13, 1930, from the Rosedale Coal Company Limited.”

Request was made by the Canadian Pacific Railway Company that the matter be heard, before any action was taken.

On referring to the notice published by the Canadian National Railway in local newspapers, setting out the intention of applying to the Board for authority to construct a spur from Drumheller eastward to Rosedale mine on the north side of Red Deer river, the Canadian Pacific Railway Company stated that no copy of the notice had been sent to it although its interests would be seriously

affected by the proposed spur. It set out that under its original branch line rights, the Canadian Pacific Railway Company had authority for the construction of its line known as the Langdon North Branch, the route for which was approved by the Minister of Railways and Canals on May 30, 1919. It was further stated that part of this route lies along the north side of the Red Deer river, which location is affected by the proposal of the Canadian National Railways. The company then continues:—

“The original location plan for our line at this point was approved by the Board by Order No. 28494 dated July 8, 1919, and revised location was approved by Order No. 28672 dated August 13, 1919. A further revision was approved by Order No. 30492 dated December 27, 1920.

“During the construction of the line the location was again revised and approved by Order No. 44914 dated June 23, 1930.

“Construction of this portion was commenced in May, 1920, from a point just east of the bridge over the river at Rosedale, and the work has proceeded continuously. The necessary right of way has been purchased to the west side of section 28, township 28, range 19, W. 4 M., and it is expected the track will be laid to this point during the present month, as it is already laid to a point in S.W. $\frac{1}{4}$ of said section, and is being ballasted.

“It will thus be observed that the proposed application of the Canadian National covers a portion of the line which this company is building in N.W. $\frac{1}{4}$ of section 28, and so far as our officials have been able to judge from the plans made public, the application covers exactly the same ground as our line which has already been approved by orders of the Board.

“If authority is granted to the Canadian National as asked for, it will mean that authority is being given by the Board to both roads to do substantially the same thing.

“I respectfully submit, therefore, that no order should be made until the company has had an opportunity of making representations as to its rights in this matter.”

The matter was then set down for hearing.

Under date of December 12, 1930, the Canadian Pacific and Canadian National Railways were written to enclosing copy of the memorandum of the Board's Chief Engineer, which reads as follows:—

“The Canadian Pacific Railway has had legislative authority to build a line on the ground covered by the recent Canadian National Railway application for twelve years, and has not constructed the line yet. The Canadian National Railway now desires to construct a branch line 3.69 miles in length, and the Canadian Pacific Railway steps in and asserts its rights.

“No doubt there will be several coal mines opened up along this proposed spur line, and both railways will wish to share in the traffic. I am of opinion that the two railways should be given authority to build a joint section, and suggest that the question be taken up with them.”

Under date of January 16, 1931, the Canadian Pacific Railway Company wrote as follows:—

“Referring to your letter of the 12th ultimo. There seems to be some confusion between this matter and the application of the Canadian Pacific to construct a spur from its Langdon North Branch, the revised location of which was approved by Order No. 44914, to the Rosedale mine, and apparently they are being dealt with by the Board under the same file number.

"Mr. Simmons' memorandum unintentionally conveys a wrong impression as to the situation along the north side of the Red Deer river, involved in the proposal of the Canadian National now before the Board.

"While it is true that this company has had authority for a number of years for the extension of its Langdon North Branch from Acme through Drumheller, it has already constructed those portions from Acme to a connection with the Canadian National at Kneehill (Drumheller), a distance of 40.31 miles, and from Rosedale to Bull Pound, a distance of 35.12 miles.

"In order to avoid for the time being the expense of crossing the river in the vicinity of Kneehill and of acquiring certain portions of the right of way on the north side of the river, our officials decided to negotiate for running rights over the Canadian National (formerly Canadian Northern) line from Kneehill to Rosedale, through Drumheller. My recollection is that the adoption of this course was originally suggested by Mr. Simmons. However, the Canadian National stipulated that this company should have no right to participate in any traffic originating at or destined to any point on the joint section, except through inter-switching.

"This company has never abandoned the location of that part of its main line along the north side of the river between Kneehill and Rosedale and has always intended to fill in this gap as and when the mines along its located line desire railway service.

"In response to the requests from the owners of the Star and Rosedale mines, this company has, during the past year, constructed about four miles of line as far west as the latter mine and has continued the grading a short distance farther west to the west side of sections 28-28-19, West 4th.

"The location of the Canadian Northern Railway Company's proposed industrial spur is in part exactly upon our Langdon North Branch as graded and approved under the Board's orders, and the obvious purpose of the applicant is to construct it in such location and manner as to preclude this company from direct participation in such further mining developments on the north side of the Red Deer river as may in time take place.

"There is nothing to be gained by forcing construction, until there is a demand for further extension along that side of the river, as this would simply mean a wasteful expenditure of money at a time when neither railway company can afford it. All the operating mines are now served by one or other of the railway companies.

"I submit, therefore, that in view of the fact that the line involved is a portion of this company's main line, for which it has prior rights and which it is extending and will continue to extend from time to time as required to meet the demand of shippers, the present application of the Canadian National, which is designed to appropriate the location for an industrial spur, should be declined. This company being excluded from the handling of any traffic to and from points on the joint section south of the river except through inter-switching, is entitled to have its prior rights on the north side preserved.

"I have sent a copy of this letter to Mr. Fraser".

The Canadian National Railway replied under date of February 2, 1931, as follows:—

"Replying to your letter of the 15th ultimo; we are anxious to construct our own spur at this point but we are quite willing to join with the Canadian Pacific Railway in a joint section, as proposed by Mr. Simmons,

and I enclose, for the Board's information, copy of a letter directed to Mr. D. C. Coleman, Vice-President of the Canadian Pacific Railway Company at Winnipeg, by Mr. A. E. Warren, Vice-President of the Canadian National Railways at Winnipeg, on January 9, 1931.

"To this letter no reply has as yet been made but if the Canadian Pacific are not willing to join in such a joint section I would submit that authority should promptly be granted to the Canadian National to construct the spur now proposed by us.

"In so far as Mr. Flintoft's letter of the 16th ultimo is concerned, Mr. Simmons is quite correct in stating that the Canadian Pacific Railway, for a great many years, have taken no action toward the construction of facilities on the north side of the river; their rights are, I submit, doubtful, but the right of the Canadian National to construct this spur under the Railway Act is unquestioned.

"There has already been placed before the Board the circumstances under which the Canadian Pacific without notice to the Canadian National, who were vitally interested, received from the Board approval of a location plan. I am quite sure that this failure to give the Canadian National notice or to let the Board know that their proposals involved the crossing of one of our lines would, apart from all other considerations, be ample justification for the Board cancelling such approval, but in any event, this has nothing to do at the moment with the right of the Canadian National to have a line approved to serve mines which are anxious for such service and which service the Canadian National are prepared to furnish, and the plan submitted by me should, I submit, receive the early approval of the Board.

"I would be grateful, therefore, if the Canadian Pacific would be called upon to say promptly whether or not it agrees to a joint section and if not, if the Board would approve my application.

" (Sgd.) A. FRASER,

"Assistant General Counsel."

Mr. D. C. COLEMAN,

Vice-President, Canadian Pacific Railway Co.,
Winnipeg, Man.

"DEAR SIR,—As you are aware, we have an application pending before the Board of Railway Commissioners for the approval of the location plan of certain trackage on the north side of the Red Deer river, 3.69 miles in length, to serve the Rosedale Coal Company and E. Powell. To this application your company, through Mr. Flintoft, objected that this location overlapped with the location of part of your line authorized by Order 44914. The matter came up for hearing at Winnipeg in November last, as a result of which the Board's Engineer now recommends that the two railways be given authority to build a joint section, and he suggests that the question be taken up by the Board with both railways.

"I am inclined to recommend to our executive adoption of the Board's suggestion, and that the tracks shown on the plan submitted by us to the Board be made a joint section, on the usual terms of our joint and equal right agreements.

"I shall be glad to know if you concur.

"Yours truly,

" (Sgd.) A. E. WARREN,

"Vice-President, Canadian National Railways."

The territory in dispute, including that in which the Scranton, Midland and Western Gem Mines are located, between the Canadian Pacific Railway Company and the Canadian National Railways, lines between Rosedale Mine spur in section 28, township 28, range 19, west 4th M., and the east boundary of section 10, township 29, range 20, west 4th M., a distance of $5\frac{1}{4}$ miles approximately. The territory actually in dispute under the present application lies between the Rosedale Mine spur and the north boundary of section 1, township 29, range 20, west 4th M., a distance of about $3\frac{3}{4}$ miles. On studying the plans, it is noted that one of the plans on file shows that the Canadian National had a spur going down from the west, through the Midland, Western Gem and Scranton properties, to within a mile of the western boundary of the Ernest Powell property in section 12. And it was suggested that the Canadian National Railway be asked, if its purpose would not be served equally as well and at a great deal less expense, by an extension of this spur from the west. After considering what was involved, the Canadian National Railway replied that to do as suggested would mean a substantial increase in cost, and would not leave a desirable situation from an operating standpoint.

The estimates of cost of the two schemes are as follows:—

Cost to construct from Rosedale to E. R. Powell property, 4·07 miles.....	\$122,100
Cost to construct from Scranton property, 0·67 miles	20,100
Cost to construct over cut-bank, 0·7 miles.....	160,000
	<hr/>
	\$180,100

It thus appears that there would be an estimated saving of over \$60,000 connected with the plan as proposed.

The Canadian Pacific Railway Company in its charter (C. 1, Dominion Statutes 1881, section 15) obtained rights as to branch line construction. A route map showing revised location from mileage 120 to mileage 215 was approved by order of the Board No. 29729, dated May 29, 1920. A route map showing revised location from mileage 38·88 to mileage 183·42 was conditionally approved by the Minister, May 30, 1919. (Board's file No. 26662.)

The Canadian National Railway obtained authority to construct a spur across the river to the Rosedale mine, on the north side of the river. This was given by Order No. 23851, dated December 13, 1915. (Board's file 22307.123.)

Authority to construct the Scranton Coal Company's spur was given by Order No. 27115 of April 9, 1918, while authority in respect to the Midland and Western Gem Coal Companies' spurs was given by Order No. 26851 of December 22, 1917. (Board's file No. 28013.)

It appears that the construction by the Canadian National Railway across the river, of the spurs in question, took place prior to the date when the Canadian Pacific Railway obtained approval of its location in the section in question. It appears possible, though not practicable, to build two lines north of the river. It would mean additional expenditure of money the justification for which is not apparent.

In dealing with the railway crossings the Board has laid down the position that the construction, not ownership or prior location, gives seniority at the point of crossing, and that the railway in actual occupation of the ground, with or without actual ownership of the fee at the point of crossing, has priority over a railway which has prior sanction of its location plan and is the senior company—priority would be with the Canadian National Railways, not the Canadian Pacific.

Kayser and Nokomis Crossing Cases, 7 Can. Ry. Cas 297, 299; C.N.R. v. C.P.R., 11 Can. Ry. Cas. 432; Midland Railway Co. v. Grand Trunk Pacific Railway Co. (St. Boniface Crossing Case), 23 Can. Ry. Cas. 80; and Erie & Ontario Ry. Co. v. Niagara, St. Catharines & Toronto Ry. Co., 18 Can. Ry. Cas. 29.

It would appear that so far as any question of rights is concerned, the authorities which have been cited are applicable.

The application of the Canadian National Railways for authority to construct a spur to serve the Rosedale Coal Company and Ernest Powell may, in my opinion, be granted, subject however to the provision that when the Canadian Pacific Railway Company desires to connect up the two portions of the Langdon North Branch by means of a line north of the Red Deer river, it be granted joint rights over the spur above mentioned.

OTTAWA, March 21, 1931.

Commissioner Norris concurred.

ORDER No. 46449

In the matter of the application of citizens of St. Raymond, in the Province of Quebec, hereinafter called the "Applicants," for an Order directing the Canadian National Railways to construct a new station on the Quebec-Chicoutimi Branch, in the Parish of St. Raymond.

File No. 37066

THURSDAY, the 19th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Quebec, November 18, 1930, in the presence of counsel for and representatives of the applicants and the railway company, and what was alleged; and upon reading the report of an inspector and an engineer of the Board, the railway company, consenting,—

The Board orders: That the Canadian National Railways remodel the station building in the said parish of St. Raymond, on the Quebec-Chicoutimi Branch, in accordance with and as shown on plan No. C-5654, dated December 14, 1929, the freight shed to be relocated and placed north of the team track, and the team track slightly relocated; and that the approaches to the cars, freight shed, and station be covered with gravel or cinders.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46459

In the matter of the trestle carrying the Nipissing Central Railway over Booth Creek, in the Township of Dasserat, District of Temiskaming, and Province of Quebec, at mileage 41.9 Rouyn Branch, and the dams constructed at Lake Berthemet and Lake Dasserat;

And in the matter of the application of the Nipissing Central Railway Company for an Order directing J. R. Booth Limited to restore the natural conditions which it has disturbed at the height of land south of Lake Dasserat.

File No. 11014.36

FRIDAY, the 20th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, September 29, 1930, and February 12, 1931, in the presence of counsel for and representatives of the railway company, J. R. Booth Limited, the Department of Lands and Forests of Ontario, the Quebec Streams Commission, the Abitibi Power and Paper Company, and the Northern Quebec Power and Paper Corporation, the evidence adduced, and what was alleged; and upon the reports of an engineer of the Board,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46456

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Swift Current Northwesterly Branch (Coronation North), mileage 0, at Harmon, to mileage 28.74, at Berkinshaw.

File No. 16645.109

TUESDAY, the 24th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Swift Current Northwesterly Branch (Coronation North), mileage 0, at Harmon, to mileage 28.74, at Berkinshaw.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46466

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 25th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in Supplement No. 15 to Tariff C.R.C. No. E-1247, Supplement No. 6 to Tariff C.R.C. No. E-1251, and Supplement No. 2 to Tariff C.R.C. No. E-1689, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46467

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 25th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 7 of Supplement No. 12 to Tariff C.R.C. No. 815, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal rate which but for the said Act would have been effective in lieu of that published in the said item 7 of Supplement No. 12 to Tariff C.R.C. No. 815, approved herein, is 16½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46468

In the matter of the application of the Canadian Passenger Association, hereinafter called the "Applicant," under Section 50 of the Railway Act, for permission to publish the General Order of the Board No. 491, dated March 9, 1931, amending the Regulations Governing Baggage Car Traffic, in the Canada Gazette.

File No. 23328

WEDNESDAY, the 25th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading what is filed in support of the application,—

The Board orders: That the applicant be, and it is hereby, granted leave to publish the said General Order of the Board No. 491, dated March 9, 1931, in the *Canada Gazette*, in accordance with the provisions of section 50 of the Railway Act.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46478

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement No. 12 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives; also Supplement No. 5 to Tariff C.R.C. No. E.T. 700, showing Container Specifications, on file with the Board under file No. 1717.12.

FRIDAY, the 27th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 12 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives; and Supplement No. 5 to Tariff C.R.C. No. E.T. 700, covering Container Specifications, filed by C. N. Ham, Chairman of the Express Traffic Association, on file with the Board under file No. 1717.12, be, and they are hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46485

In the matter of the Order of the Board No. 46425, dated March 17, 1931, approving the tolls published in the Dominion Atlantic Railway Company's Tariff C.R.C. No. 859.

File No. 34822.13

WEDNESDAY, the 1st day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon its appearing that normal tolls to certain destinations named in Tariff C.R.C. No. 859, filed by the Dominion Atlantic Railway Company, have been omitted from the said Order No. 46425,—

The Board orders: That Order No. 46425, dated March 17, 1931, be, and it is hereby, amended by adding the following normal tolls, namely:—

To	Rates in cents per 100 pounds
Hale to Andover, N.B.....	29½
Aroostook to Argosy, N.B.....	31
Grand Falls, N.B.....	26½
Martin, N.B.....	28½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46486

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 1st day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in Supplement No. 11 to Tariff C.R.C. No. E-1226, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46489

In the matter of the application of the Consumers' Glass Company, Limited, of Montreal, Quebec, for a reduction in the rates on glass bottles and jars, in carloads, from Montreal, Quebec, to points in Canada.

File No. 490.3

WEDNESDAY, the 1st day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, November 5, 1929, in the presence of counsel for and representatives of the applicant company and the Canadian Freight Association, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46497

In the matter of the application of the Express Traffic Association of Canada, under sections 322 and 360 of the Railway Act, for approval of proposed Supplement "L" to Express Classification for Canada No. 7, providing for the cancellation of Condition of Carriage 16 and the establishment of a rating of one and one-half times first class on Feathers (Millinery); Flowers, Foliage or Fruit, Artificial; Hat or Bonnet Frames; Hats; Millinery and Millinery Goods; and Straw Goods.

File No. 4397.98

TUESDAY, the 7th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Whereas notice has been given by the Express Traffic Association of Canada in the *Canada Gazette*, as required by section 322 of the Railway Act, and copies of the said supplement were furnished to the trade bodies and organizations enumerated in the Board's General Orders Nos. 271, 348, 469, and 471, with the request that their objections, if any, be filed with the Board within thirty days;

And upon consideration of the said objections, and upon hearing the application at the sittings of the Board held in Winnipeg, March 12, 1930; in Edmonton, March 17, 1930; in Vancouver, March 21, 1930; in Montreal, June 6, 1930; in Toronto, November 18, 1930; and in Ottawa, January 20, 1931, in the presence of representatives of various complainants and the Express Traffic Association of Canada, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said proposed Supplement "L" as revised in compliance with the terms of the Board's judgment herein dated March 6, 1931, and filed by the Express Traffic Association of Canada on April 2, 1931, be, and it is hereby, approved; the said supplement to be published as No. 16 to Express Classification for Canada No. 7.

S. J. McLEAN,

Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF JANUARY, 1931

Railway accidents153, involving 22 persons killed and 152 injured.
 Railway accidents at highway crossings.... 30, involving 3 persons killed and 42 injured.

	Killed.	Injured
Passengers..	—	33
Employees..	4	110
Others..	21	51
	<u>25</u>	<u>194</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF NOVA SCOTIA

No. of
Accidents

- 1 Automobile—Licence N.S. 73-093.

PROVINCE OF NEW BRUNSWICK

- 1 Automobile—Ran into side of train. Licence Maine H-152.

PROVINCE OF QUEBEC

- 1 Automobile—Auto driver failed to stop at crossing. Que. licence 85302.
 3 Auto trucks—Truck driver failed to stop at crossing. Que. licences F-17554, K-1027, F-1096.
 1 Pedestrian—passed under gates in lowered position, struck by train.

PROVINCE OF ONTARIO

- 5 Automobile—Ran into side of train. Ontario licences T-4255, L-8224, BL-246, ET-177, BH-527.
 1 Auto truck—Ran into side of train. Ontario licence 50778-C.
 1 Automobile—Auto driver disregarded crossing watchman's signal. Ontario licence NU-687 (1930).
 1 Auto truck—Truck driver attempted to beat train. Ontario licence 68021-C.
 4 Automobile—Ontario licences C-30309, N-5868, T-9637, AD-295.
 3 Auto truck—Ontario licences 24147-C, 57869-C, 55509-C.
 1 Automobile—Skidding auto struck pedestrian, throwing her in front of train. Ontario licence DS-644.

PROVINCE OF MANITOBA

- 1 Automobile—Ran into side of train. Man. licence 51-864.
 1 Automobile—Reckless driving. Man. licence 11-595.
 1 Pedestrian.

PROVINCE OF SASKATCHEWAN

- 1 Auto truck—Ran into side of train. Sask. licence T-2735.

PROVINCE OF ALBERTA

- 1 Automobile—Auto driver attempted to beat train. Alta. licence 1345.
 1 Auto truck—Alta. licence T-17-098.

PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—B.C. licence 23629.

Of the thirty accidents at highway crossings, five occurred at protected crossings and twenty-five at unprotected crossings. Twelve of the accidents occurred during daylight hours and eighteen during the night hours.

OTTAWA, March 27, 1931.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, May 1, 1931

No. 3

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Application of Dominion Traffic Association, Toronto, Ontario, for a ruling of the Board as to the legal rate on a carload shipment of steel bars from Hamilton, Ontario, to Sarnia, Ontario, shipped December 21, 1929, over the line of the Canadian National Railways.

File No. 37825

BY THE BOARD:

This matter has been presented to the Board by written submissions filed by the applicant and reply thereto by the Canadian National Railways. The question submitted for ruling and the contention of applicant is set out in a communication dated February 18, 1931, reading as follows:—

"We are enclosing herewith a copy of claim statement in duplicate covering a carload shipment of steel bars from Hamilton, Ont., to Sarnia, shipped December 21, 1929, which we have filed against the Canadian National Railway.

"This shipment was billed out at the 6th class rate of 27½ cents carried in Canadian National Tariff G.T.R. T-7, C.R.C. E-3448, whereas we claim a rate of 26½ cents, being the rate from Suspension Bridge to Sarnia, and Hamilton being intermediate, as a shipment from Suspension Bridge to Sarnia, moving over Canadian National Railways' shortest route would pass through Hamilton.

"The 26½-cent rate is the 5th class rate carried in Central Freight Association Tariff 260-A, C.R.C. No. 843, I.C.C. No. 1417, which shows the Canadian National as originating and terminal carrier. Supplement 64, Item 5-A of this tariff, distinctly states, 'From any point not named in this tariff which is intermediate to a point from which class rates are published herein through such unnamed point, apply from such unnamed point the class rate published herein from the next more distant point.' This fully covers our understanding of your ruling that 'greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction, if such shorter distance is included in the longer.'

"Provisions of Item 115, page 145 of C.F.A. tariff, regarding commodity rates taking precedence over class is complied with, in that on referring to Rule 2, page 14 of Canadian National Tariff CI-41, C.R.C. E-1283, in which a commodity rate is carried from Hamilton to Sarnia,

reads 'the class rate at actual weight will apply if such makes a lower charge per car than the commodity rate and minimum weight published herein'—which in this case is so, thereby eliminating the commodity rate as a factor, or in other words, the class rate being cheaper, it becomes the legal rate.

"We are unable to find anything in Central Freight Association Tariff No. 260-A, C.R.C. No. 843, stating that the intermediate clause cannot be applied in this particular instance, and in the Canadian National Railways' declination, they quote no authority, using the term: 'It has always been the view of the Canadian railways that on any rates from points in the United States to any points in Canada, the rates would not be used under the intermediate application on traffic moving locally between two points in Canada'—

"We, however, feel that the rule would so limit the application if this were meant, and in view of no such limitation being expressed, we would ask that on your reviewing the above, you give a ruling as to the correct rate to apply in this instance."

The answer of the Canadian National Railways is contained in a letter dated March 30, 1931, from its Assistant General Counsel, reading:—

"Central Freight Association Tariff 260-A, C.R.C. 843, has no application from points in Canada, that is to say, no originating points in Canada are shown in this tariff.

"The Dominion Traffic Association refer to a ruling of the Board with regard to what is known as the long and short haul clause, but this is really in substance part of section 314 of the Railway Act, and complainants omit what in my opinion are some vital parts of subsection 5 of the section above referred to, and for ready reference I might quote this subsection 5 of section 314:

'(5) The Board shall not approve or allow any toll, which for the like description of goods, or for passengers *carried under substantially similar circumstances and conditions* in the same direction over the same line or route is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll.'

"In this connection I would also like to refer to subsection 6 of section 314, reading as follows:—

'(6) The Board may declare that any places are competitive within the meaning of this Act.'

"This section is intended to apply, of course, only to railways under the jurisdiction of the Board, and while the Canadian National may be shown as an originating carrier in C.F.A. C.R.C. 843 under the general power of attorney issued to the Tariff Publishing Agent of the United States lines, the traffic herein involved does not originate on the rails of the Canadian National Railways.

"General Order No. 479, issued by the Board of Railway Commissioners, section 32 at page 171 (J.O.R. & R., Vol. XIX) indicates clearly the jurisdiction assumed by the Board of Railway Commissioners in so far as the application of the long and short haul principle is concerned. There is nothing in this section to indicate that rates published from points in the United States to points in Canada, even if not shown as competitive, must apply *from* intermediate points in Canada. Subsection C deals with tariffs naming rates from points in the United States to points in Canada and simply provides that they must not be exceeded *to* intermediate points in Canada.

"Reference is also made to item 115, page 145 of C.F.A. Tariff 260-A, C.R.C. 843, which deals with a commodity rate when published taking precedence over a class rate, and the provision in Canadian National Tariff CI 41, C.R.C. E-1283, that class rate at actual weight will apply, if same makes a lower charge per car than commodity rate and minimum weight published in connection therewith. These rules have absolutely no connection. The item referred to in the Central Freight Association tariff cannot be applied under our Railway Act or the regulations of our Board, that is to say, our published class rate and minimum weight attached thereto is the maximum we can charge, whereas in the United States a commodity rate, even if it be higher than the class rate, takes precedence.

"Under the circumstances we submit that rates published from points in the United States, such as Buffalo and Detroit, and, in the case under discussion, from Suspension bridge, are not necessarily applicable from points in Canada to points in Canada."

The rate of 27½ cents charged is the 6th class rate (being the carload rating provided for these articles in the Canadian Freight Classification) as published in Canadian National Railways Tariff C.R.C. No. E-3448, naming class rates between stations on the Canadian National Railways. The claimed rate of 26½ cents is the 5th class rate (being the carload rating provided in the Official Classification) published from Suspension Bridge, N.Y., to Sarnia, Ont., in Central Freight Association Tariff Bureau, B. T. Jones, Agent, freight tariff C.R.C. No. 843. It is stated by applicant that Hamilton is an intermediate point with respect to a shipment moving from Suspension Bridge, N.Y., to Sarnia, Ont., therefore the 26½-cent rate is claimed to be applicable by reason of the wording of the rule in tariff last named regarding application of rates from intermediate points; and also by virtue of the so-called long and short haul provisions of the Railway Act, 1919.

The long and short haul provisions of the Railway Act apply with respect to movements between points within Canada. The existence of a rate from a point in the United States to a point in Canada lower than the rate published between two intermediate points both of which are within Canadian territory, does not create a violation of the long and short haul provisions of the Railway Act, which are applicable between points in Canada with respect to tariffs publishing rates which are not competitive.

While not particularly relevant to the question here in issue, namely, the legal rate in effect on the specific shipment covered by this application, the reasons for certain rates from United States points of origin to Canadian destinations lower than applicable from Canadian points of origin intermediate thereto to the same destinations, are, as a result of the many cases dealt with by the Board, well known and are reviewed at some length in Judgment of the Board in application of the Consumers Glass Company, Limited, Montreal, Quebec, for reduction in rates on glass bottles and jars, in carloads, Montreal, Quebec, to points in Canada, Volume 21, Board's Judgments, Orders and Rulings, page 1, at pages 13 to 16 and 21 to 23.

So far as relates to the Interstate Commerce Act, applicable with regard to transportation within the United States, the Interstate Commerce Commission has stated, in substance, that the long and short haul provisions of said Act do not apply when the more distant points and the intermediate point are in a foreign country (Interstate Commerce Commission Conference Rulings, 318-447).

Further, Agent Jones' tariff is a special freight tariff, and in view of what is later set out herein concerning the application and construction of this tariff, what is stated in the Judgment of the Board in application of Canadian

Canners, Limited, Hamilton, Ont., *re* bituminous coal, Erieau, Ont. to Waterford, Ont., Volume 17, Board's Judgments, Orders and Rulings, page 28, concerning the interpretation of section 329 of the Railway Act as applicable to special freight tariffs and the distinction referred to therein as between movements "over the same line" and "over the same line or route," is relevant to what is here involved.

It is in conformity with what is above stated that the Board's Circular No. 223, prescribing rules and regulations governing the construction and filing of freight rate schedules, provides (rule 32):—

(a) "Tariffs issued between specific points in Canada containing rates which are not competitive under section 329, subsection 4, of the Railway Act, shall contain the following clause:—

'The rates named herein unless specifically indicated as competitive, are maximum rates and must not be exceeded in the same direction from or to any intermediate points in the direct line of transit.'

(b) Tariffs naming rates from points in Canada to points in the United States shall contain a rule to the effect that such rates, unless specifically indicated as competitive, must not be exceeded *from* intermediate points in Canada.

(c) Tariffs naming rates from points in the United States to points in Canada shall contain a rule to the effect that such rates, unless specifically indicated as being competitive, must not be exceeded *to* intermediate points in Canada."

The corresponding rule in the previous tariff circular of the Board provided:—

"Tariffs naming freight rates from points in the United States to points in Canada or from points in Canada to points in the United States shall contain a rule to the effect that said rates, unless specifically indicated as being competitive, will apply as maxima to or from intermediate points in *Canada*.

This wording gave rise to some confusion concerning the application of these international tariffs with respect to the same point as is here raised by applicant, which was the reason for its revision and providing in (b) "from" intermediate points in Canada; and (c) "to" intermediate points in Canada, but not also "from" intermediate points in Canada.

Applicant refers to shipments from Suspension Bridge, N.Y., and Hamilton, Ont., as both originating on the Canadian National Railways. While the various lines operated by the Canadian National Railways System are commonly so described, there is a clear distinction as between various portions of that system in the matter of construction and filing of tariffs. For example, there is a distinct unit described as Grand Trunk Railway System (lines west of Detroit and St. Clair rivers); another, Grand Trunk Railway System (lines in the United States east of the west bank of the Detroit and St. Clair rivers); Canadian National Railways (West Fort William, Ont., Armstrong, Ont., and east thereof); also Canadian National Railways (lines Port Arthur, Armstrong, Ont., and west thereof). Stated briefly, for tariff making purposes these are four distinct lines and rates are published from points on one of these lines to points on the others under authority of forms of concurrence furnished by the latter.

Adverting now to Agent Jones' tariff C.R.C. No. 843. This is a special freight tariff publishing local and joint class rates from points in the United States to points in Canada. It does not name any rates from a point in Canada to Canadian destinations. It is published and filed by Agent Jones on

behalf of various initial participating carriers who have, by powers of attorney, constituted him their agent to file freight rate schedules and supplements thereto in their name, place and stead, and to receive concurrences therein from other participating carriers. He is also authorized by concurrences duly filed by intermediate and terminal carriers, to publish rates from stations on such initial participating carriers via and to (but not from) points on such concurring intermediate or terminal carriers. These authorities are set out on pages three, four and five of the tariff and as amended by supplements thereto. On page four of Supplement 58 to the tariff, the Grand Trunk Railway System (lines in the United States east of the west bank of the Detroit and St. Clair rivers) is shown as a participating carrier under Power of Attorney FX. 1 No. B. 36, filed with the Interstate Commerce Commission. This document reads as follows:—

POWER OF ATTORNEY

To be forwarded to B. T. Jones, Agent

F. X. 1. No. B. 36

Cancels

F. X. 1. No. B. 2

GRAND TRUNK RAILWAY SYSTEM

(Lines in the United States, East of the West Bank of the Detroit and St. Clair Rivers) Comprising carriers shown on reverse side

(Corporate name of Carrier.)

(P.O. Address) 360 McGill Street, Montreal,

December 28, 1928.

KNOW ALL MEN BY THESE PRESENTS:

That the Grand Trunk Railway System (lines east as shown on reverse side) has made, constituted and appointed, and by these presents does make, constitute and appoint B. T. Jones its true and lawful attorney and agent for the said company and in its name, place and stead, (1) for it alone, and (2) for it jointly with other carriers, to receive concurrences in, and to file freight rate schedules and supplements thereto, as required of common carriers by the Interstate Commerce Act and by regulations established by the Interstate Commerce Commission thereunder, for the period of time, the traffic, and the territory now herein named:

Until revoked in accordance with the rules of the Interstate Commerce Commission.

All freight traffic;

All territory.

And the said Grand Trunk Railway System (lines east as shown on reverse side) does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully, to all intents and purposes, as if the same were done and performed by the said company hereby ratifying and confirming all that its said attorney and agent may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

And further, that the Grand Trunk Railway System (lines east as shown on reverse side) has MADE, constituted and appointed, and by these presents does make, constitute and appoint as alternate Eugene Morris its true and lawful attorney and agent for said company and in its name, place and stead (1) for it alone, and (2) for it jointly with other carriers in case and only in case of the death or disability of the said B. T. Jones, to do and perform the same acts and exercise the same authority as hereinabove granted to B. T. Jones.

In witness whereof the said company has caused these presents to be signed in its name by its vice-president and to be duly attested under its corporate seal by its assistant secretary at Montreal, in the province of Quebec on this 28th day of January in the year of our Lord, nineteen hundred and twenty-nine.

GRAND TRUNK RAILWAY SYSTEM
(Lines East as shown on reverse side)

(Sgd.) HENRY PHILLIPS,
Asst. Secretary

(Sgd.) GERARD RUEL,
Its Vice-President.

Carriers shown on reverse side of Power of Attorney as above referred to, described as follows:—

GRAND TRUNK RAILWAY SYSTEM

(Lines in the United States, East of the West bank of the Detroit and St. Clair Rivers.)

Comprising the following carriers—

Canadian National Railway Company.
The Champlain and St. Lawrence Railroad Company.
The United States and Canada Railroad Company.
Canadian National Railway Company, Lessee.

Suspension Bridge, N.Y., is shown as a station on the above-named line, see pages 50 and 98 of the tariff. The Canadian National Railways (lines west Fort William, Ont., Armstrong, Ont., and east thereof), Hamilton being located thereon, is shown by page 2 of Supplement 58 as a participating carrier under Concurrence FX. 6, No. E-33, which reads as follows:—

CONCURRENCE

(To be forwarded to B. T. Jones, Agent.)

F. X. 6 No. E. 33
Cancels

F. X. 6 No. E. 15

CANADIAN NATIONAL RAILWAYS

(Lines West Fort William, Ont., Armstrong, Ont., and East thereof).
(Corporate name of Carrier)

P.O. Address—360 McGill Street, Montreal, Que.

June 18, 1929.

To The Interstate Commerce Commission, Washington, D.C.

This is to certify that the Canadian National Railways (Lines West Fort William, Ont., Armstrong, Ont., and East thereof), assents to and concurs in the publication and filing of any freight rate schedule or supplement thereto, which the carriers for which B. T. Jones, or Eugene Morris, may act under Power of Attorney filed with the Interstate Commission, or either or any of said carriers, may make and file through either of said agents and in which it is shown as a participating carrier, and hereby makes itself a party thereto and bound thereby, in so far as such schedule contains rates applying via its lines, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation filed with the Interstate Commerce Commission and sent to the carriers to which this concurrence is given or to their agent and attorney herein named.

CANADIAN NATIONAL RAILWAYS

(Lines West Fort William, Ont., Armstrong, Ont., and East thereof).

By (Signed) C. W. WELLS,

Chief of Tariff Bureau.

Upon reference to the tariff, it is noted in the column headed "Extent of Participation," opposite the Canadian National Railways (lines west Fort William, Ont., Armstrong, Ont., and east thereof) there appear the letters X and Z, meaning, as shown therein, X—originating carrier, Z—intermediate and/or terminal carrier. So far as showing this line as an originating carrier under the authority cited and above quoted, this is palpably an error as is apparent from the reading of F.X. 6 No. E. 33, and this reference should be eliminated from the tariff. No rates are named in the tariff from points of origin on the Canadian National Railways (lines west Fort William, Ont., Armstrong, Ont., and east thereof) nor is there any authority for publishing rates from points of origin thereon under Concurrence Form F.X. No. E. 33.

The rule in this tariff regarding application of rates from intermediate stations, reads:—

Rates Applying from Intermediate Stations

"From any station of origin from which a specific rate is not named, which station is located directly between two stations of origin from which different rates are named, the rate will be the same as from the one of the two stations between which it is directly located from which the higher rate is named.

"If the station of origin from which a specific rate is not named is located directly between two stations from which the same rate applies, such rate will also apply from the intermediate station.

"If the station of origin from which a specific rate is not named is not located between two stations from which specific rates are named, the rate from the next more distant station located on the *same railroad* will apply."

In supplement 58 to the tariff, this rule was changed to read:—

Class Rates Applicable from Intermediate Points

"From any point not named in this tariff which is intermediate to a point from which class rates are published herein through such unnamed point, apply from such unnamed point the class rate published herein from the next more distant point."

The amended rule was prefixed with a symbol denoting "Changes in wording which result in neither increase nor reduction in charges."

There is a clear and significant distinction between the power of attorney and the form of concurrence above quoted. Agent Jones is appointed agent under power of attorney to issue tariffs for the Grand Trunk Railway System (lines in the United States east of the west bank of the Detroit and St. Clair rivers) naming joint rates from points on that line as well as the others from whom he holds similar power of attorney. He is authorized by form of concurrence to publish rates to or via, but not from, points on the Canadian National Railways (lines west Fort William, Ont., Armstrong, Ont., and east thereof). To say that the rule in Agent Jones' tariff regarding application of rates from intermediate points has the effect of establishing rates from Hamilton on the Canadian National Railways, would be in direct conflict with the concurrence form given Agent Jones by the Canadian National Railways, which did not authorize him to publish rates from Hamilton. The situation here, as above set out, is parallel to that developed in the application of the Canada Cement Company, Limited, Montreal, Quebec, *re* rate on gypsum rock from Caledonia, Ont., Volume 14, Board's Judgments, Orders and Rulings, page 291. In that case there was a rate published from Lythmore on the Michigan Central Railroad applying to

stations on the Grand Trunk Railway, and Caledonia, on the Grand Trunk Railway, was an intermediate point of origin. In this judgment it is stated:—

“It is contended that under the long and short haul provisions of the Railway Act, that the rate from Lythmore, Ont., is the maximum on movements from the intermediate point, Caledonia, Ont., to the destinations in question.”

The judgment sets out the situation as to the terms of the Concurrence Form furnished the Michigan Central Railroad by the Grand Trunk Railway, and states:—

“So far as tariff inter-relations between the Michigan Central and the Grand Trunk were concerned, the concurrence limited its scope to traffic moving ‘to or via’ (not from) Grand Trunk Railway points; and as the Grand Trunk did not file as an initial carrier under a C.R.C. number, it would appear that, as a matter of tariff construction, the rule on p. 18 of the tariffs as to application of rates from intermediate stations could only have been intended to apply to stations on the lines of the initial carriers who filed said tariffs under their C.R.C. numbers.”

The Interstate Commerce Commission have considered the matter of interpretation of intermediate rules, and, in substance, stated that intermediate rules not otherwise restricted are confined to the scope of the tariff as indicated on the title page, see *Sinclair Oil and Gas Company vs. M. & O.R.R.*, 129 I.C.C., 281; *National Refining Company vs. C.C.C. & ST. L. R.R.*, 139 I.C.C., 307; and *Cross-Bodine Lumber Company vs. B. & O.R.R.*, 140 I.C.C., 411. The tariff here in question is shown on title page as containing class rates from points in Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, Wisconsin, to points in the Dominion of Canada, and under the decision of the Interstate Commerce Commission in the cases above cited, the statement on the title page of the states from which rates are named therein, excludes all other states or points in Canada as origin territory.

RULING

Upon consideration of the submissions filed, and for the reasons herein set out, the ruling of the Board is that the provision in Agent Jones' tariff C.R.C. No. 843 regarding application of rates from intermediate points is applicable only to intermediate points of origin on the lines of the originating carriers participating therein from whom he has authority under Power of Attorney to publish tariffs from stations on such lines; that the Canadian National Railways (lines west Fort William, Ont., Armstrong, Ont., and east thereof) do not participate in said tariff as an originating carrier, consequently, the rule in question is not applicable from Hamilton, Ont., located on the said line; the Canadian National Railways tariff C.R.C. No. E-3448 complies with the statutory provisions as to publication and filing, and the rates published therein are the lawful rates under the provisions of section 331 of the Railway Act.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, ONTARIO, April 14, 1931.

GENERAL ORDER No. 492

In the matter of the application of the Bureau of Explosives for leave to use compressed gas cylinders in Canada in the transportation of liquefied petroleum gas, under Container Specifications 3A, 3B, 3C, 3D, 3E, 4, 4A, 4B, and 4C, published in Agent B. W. Dunn's Tariff C.R.C. No. 2, on file with the Board.

File No. 1717.38.3

WEDNESDAY, the 15th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon its appearing that a revision of the rules for the transportation by freight of explosives and other dangerous articles over railways in Canada is now in progress; and upon the consent of the Railway Association of Canada, filed,—

The Board orders: That, effective April 15, 1931, steel cylinders complying with Container Specifications 3A, 3B, 3C, 3D, 3E, 4, 4A, 4B, and 4C, published in Agent B. W. Dunn's Tariff C.R.C. No. 2, on file with the Board under file No. 1717.38.3, but marked with markings in which the letters "CRC" are substituted for the letters "ICC" as shown in the specifications, be, and they are hereby, authorized for use for shipping classes of freight permitted by the said tariff to be shipped in such containers over railways in Canada subject to the jurisdiction of the Board.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46510

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

FRIDAY, the 10th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in item 5, section D, of Supplement No. 32 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 5, section D, of Supplement No. 32 to Tariff C.R.C. No. 783, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Middleton, N.S.	16
Bridgetown, N.S.	19

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46521

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

FRIDAY, the 10th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in Supplement No. 21 to Tariff C.R.C. No. E-1230, Supplement No. 42 to Tariff C.R.C. No. E-1235, and Supplement No. 30 to Tariff C.R.C. No. E-1246, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46522

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 10th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item No. 61A of Supplement No. 7 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 61A of Supplement No. 7 to Tariff C.R.C. No. 851, approved herein, is 18 cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46526

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 10th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the normal toll, Kentville and Port Williams, Nova Scotia, in item 15 of Supplement No. 27 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of that published in the said item 15 of Supplement No. 27 to Tariff C.R.C. No. 817, approved herein, is 9 cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46516

In the matter of the application of H. G. Toll, Agent, Transcontinental Freight Bureau, Chicago, Illinois, for permission to file, on less than statutory notice, supplements to Transcontinental tariffs increasing international rates on grain, grain products and seeds.

File No. 27612.53

MONDAY, the 13th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon its appearing that the order of the Interstate Commerce Commission in Docket 17,000 (Part 7), Rate Structure Investigation, grain and grain products, within western district and for export, dated July 1, 1930 (as amended), requires readjustment of rates on those commodities, effective June 1, 1931, and, conformably therewith, changes in rates are also necessary from points in Canada to points in the United States, from points in the United States to points in Canada, and between points in the United States through Canada,—

The Board orders: That H. G. Toll, Agent of the Transcontinental Freight Bureau, acting under powers of attorney, be, and he is hereby, permitted to file upon twenty days' notice, effective June 1, 1931, supplements to his tariffs C.R.C. Nos. 563, 566, 571, 572, 573, and 587, increasing rates on grain, grain products, and seeds; and that Orders Nos. 45892 and 46323, dated respectively December 5, 1930, and February 23, 1931, be rescinded.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 46537

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 16th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in Supplement No. 26 to tariff C.R.C. No. E-1255, and in Supplement No. 3 to tariff C.R.C. No. E-1689, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of sub-section 2 of the said section 3.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 46546

In the matter of the complaints of the Iroquois Pulp and Paper Company, Thomson, New York, et al, regarding tariff schedules of various Canadian carriers providing for cancellation of the existing through rates on pulpwood, carloads, from Canadian shipping points to destinations on the Greenwich and Johnsonville Railway.

File No. 37877

TUESDAY, the 21st day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon reading what has been filed in support of the complaints,—

The Board orders: That the tariff schedules named below, in so far as they provide for advances in, or cancellation of, the through rates on pulpwood, carloads, from Canadian shipping stations to destinations on the Greenwich and Johnsonville Railway, be, and they are hereby, suspended until further order of the Board, namely:—

	<i>C.R.C. Number</i>
Canadian National Railways, Supplement 2 to.....	E-1697
Canadian Pacific Railway, Supplement 10 to.....	E-4258
Quebec Central Railway, Supplement 10 to.....	958

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46555

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

MONDAY, the 20th day of April, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*C. LAWRENCE, *Commissioner.*

The Board orders: That the tolls published in Supplement No. 22 to Tariff C.R.C. No. E-1230, Supplement No. 16 to Tariff C.R.C. No. E-1247, Supplement No. 2 to Tariff C.R.C. No. E-1671, and Supplement No. 1 to Tariff C.R.C. No. E-1702, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of Railway Commissioners for Canada



Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, May 9, 1931

No. 4

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of Other Vehicles, and of Pedestrians at Protected Railway Crossings

Files Nos. 45.8.1; 45.8.2; 45.8.3.

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from January 1, 1931, to March 31, 1931, show forty-one cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from July 1, 1930, to December 31, 1930, and (Eastern Lines) from November 1 to December 31, 1930, and January 1 to January 31, 1931, show a total of one hundred and eighteen cases.

The Toronto, Hamilton and Buffalo lines from January 1, 1931, to April 30, 1931, show four cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplors this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Dec. 17....	10.20 a.m....	Devonshire Rd., Walkerville, Ont.	E-244.....	Left car parked in bus zone and without brakes on.
Jan. 9....	13.45 K....	Crossing at north end passing track, Three Hills.	Alta. 63-268....	Ran into side of extra south 2617 during switching operations on passing track, Three Hills. No one injured but auto damaged.
" 12....	12.15.....	Private crossing east of Viking Station, Alta.	C-13441.....	Did not stop while crossing track; rear end struck by Ex. W. 2179. No injuries.
Dec. 19....	3.00 p.m....	Front St., Orillia, Ont.	55271-C.....	Drove through gates, breaking point off arm.
" 19....	3.55 p.m....	Front St., Orillia, Ont.	V-449.....	Drove through gates.
" 20....	2.40 p.m....	Charlotte St., Peter- boro, Ont.	K.Y. 729.....	Driver approached crossing at too great a speed.
" 23....	11.02 a.m....	First public crossing east of Sutton.	V-370.....	Approached crossing at too great a speed knowing track was blocked.
" 25....	1.20 a.m....	King St., Sherbrooke, Que.	65899.....	Speeding—unable to stop car; broke gate.
" 29....	5.45 p.m....	Atwater Ave., Mont- real, Que.	19579.....	Ignored stop signals; drove under lowered gates.
Jan. 9....	4.45 p.m....	Montreuil Road, Walkerville, Ont.	5350.....	Auto slid into gate; slippery pavement.
" 19....	8.40 K....	92nd St., Crossing, Edmonton, Alta.	E-2206.....	Disregarded warning signals; failed to stop; struck by train; no injuries.
" 19....	1.55 p.m....	Simcoe St., Oshawa, Ont.	Ont. 56-273C....	Crashed through south west gate.
" 22....	13.23.....	Public crossing, near Grandora, Sask.	.....	Sleigh broke down on crossing resulting in same being damaged.
" 22....	6.30.....	Private crossing, Mel- ville.	.....	Drove on crossing in front of train; driver and team killed.
" 26....	9.40 p.m....	Atwater Ave., Mont- real, Que.	F-4131.....	Ignored signals to stop.
" 27....	12.45 p.m....	Atwater Ave., Mont- real, Que.	54299.....	Ignored stop signals.
" 28....	11.00 p.m....	Walker Road, Walkerville, Ont.	C-66678.....	Storming very heavy, and slippery pavement.
" 29....	2.15 p.m....	Atwater Avenue and Centre St., Mont- real, Que.	Que. F 7513....	Ignored stop signals.
" 29....	2.25 p.m....	Atwater and Centre St., Montreal, Que.	Que. F 2038....	" "
" 30....	12.15 p.m....	Atwater Ave., La- chine Canal Bank, Montreal, Que.	Que. 46951.....	" "
" 30....	10.00 p.m....	Port Hope, Ont.....	.....	Car parked opposite Ontario House, Ontario St., foul of main line holding up No. 94.
Feb. 2....	7.30 p.m....	McIntyre St., crossing, North Bay, Ont.	JL-71.....	Car not under control when approach- ing crossing.
" 7....	8.30 a.m....	Fleet St., Toronto, Ont.	J-100.....	Ignored stop signals.
" 7....	8.30 a.m....	Fleet St., Toronto, Ont.	O-135.....	" "
" 7....	12.15.....	Main St., Jarvis, Ont.	.....	Ran into gates, breaking same.
" 2....	11.55 a.m....	Hunter St., Peter- boro, Ont.	2518.....	Approached crossing at too great a speed.
" 4....	10 K.....	Dewdney Ave., Re- gina, Sask.	16875.....	Ignored signals.
" 7....	9.35.....	Portage Junction, Win- nipeg, Man.	13625.....	Ran into gates.
" 9....	8.00 a.m....	Fleet St., Toronto, Ont.	C-133.....	Ignored stop signals.
" 10....	1.25 p.m....	Fleet St.....	F-6625.....	" "
" 11....	22.15.....	Albert St., Regina, Sask.	Man. 1-930.....	" "
" 14....	9.00 a.m....	Fleet St., Toronto, Ont.	A-5985.....	" "
" 14....	1.30 p.m....	Fleet St., Toronto, Ont.	H-8752.....	" "
" 16....	8.30 a.m....	Fleet St., Toronto, Ont.	F-6065.....	" "
" 16....	8.30 a.m....	Fleet St., Toronto, Ont.	K-8298.....	" "

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Feb. 20....		Atwater Ave., Lachine Canal Bank, Mont- real, Que.	Que. 39189.....	Ignored stop signals.
" 21....	7.44.....	Sixth St., Brandon, Man.	Man. 42-941.....	" "
" 21....		Atwater Ave., Lachine Canal Bank, Mont- real, Que.	Que. 37659.....	" "
" 21....		Atwater Ave., Lachine Canal Bank, Mont- real, Que.	Que. H. 22535...	" "
" 22....		Kingston Road cross- ing, Cobourg, Ont.	.....	Did not have car under control ap- proaching crossing.
Mar. 12....		Fleet St., Toronto, Ont.	.....	Ignored stop signals.
" 26....	19.15 K....	Broad St. and 4th Ave., Regina, Sask.	Sask. 23-476....	Ignored stop signal, narrowly averting being struck.
April 4....	13.03 K....	Public crossing, east of Lazare Station, Man	Man. 41506.....	Drove on to crossing in front of ap- proaching train; resulting in fatal injury.
" 6....	7.36 K....	Dewdney Ave., Re- gina, Sask.	.....	Disregarded stop signal; crossed in front of train, narrowly escaping being struck.

CANADIAN PACIFIC RAILWAY—WESTERN LINES

MANITOBA DISTRICT

Date and District	Time	Crossing	Auto No.	Remarks
Oct. 30....	18.15 K..	18th St., Brandon..	Man. 43-984..	Crossing gates closed during switching opera- tions. J. Elliott driving Buick sedan ran into east gate, south side, breaking it off.
Dec. 10....	15.20 K..	" "	Man. 62-571..	Crossing gates down during switching opera- tions. J. East driving Ford touring car ran into east gate, south side, breaking it off
" 18....	19.20 K..	" "	Man. 110-640	Crossing gates closed during switching opera- tions. Ford truck belonging to Brandon Creamery ran into east gate, south side, breaking arm off.

SASKATCHEWAN DISTRICT

Nov. 14....	15.25 K..	Broadway St., Yorkton.	82-916.....	Tried to cross over against stop signal while engine backing in to side track and got so close to track had to give engineer signal to stop.
Dec. 9....	14.40 K..	" "	78-223.....	Crossed over track when stop signal was up, about 100 feet in front of engine.
" 11....	20.00 K..	" "	92-968.....	Crossed over track against stop signal, about 50 feet in front of train.

ALBERTA DISTRICT

Oct. 7....	17.00 K..	4th St. West, Cal- gary.	10-655.....	Ran into west centre gate, breaking it.
" 15....	19.30 K..	" "	6-951.....	Ran into south east gate, breaking off both sides.
Dec. 24....	20.40 K..	" "	5-167.....	Ran into southeast gate, breaking it.

CANADIAN PACIFIC RAILWAY—WESTERN LINES—*Concluded*

BRITISH COLUMBIA DISTRICT

Date and District	Time	Crossing	Auto No.	Remarks
Oct. 6....	12.12 K.	Powell St., Vancouver.	B.C. 70-265...	Ignored stop signal.
" 7....	17.00 K.	Columbia Ave., Vancouver.	B.C. 89-575...	Ran under No. 3 gate when same coming down.
" 8....	10.28 K.	Powell St., Vancouver.	B.C. 97-520...	Ignored stop signal.
" 14....	9.21 K.	" "	B.C. 91-953...	" "
" 15....	7.50 K.	" "	B.C. 74-235...	" "
" 15....	9.11 K.	" "	B.C. 65-112...	" "
" 16....	10.22 K.	" "	B.C. 78-313...	" "
" 27....	8.28 K.	" "	B.C. 66-514...	" "
Nov. 14....	9.22 K.	" "	B.C. 93-329...	" "
" 17....	10.24 K.	" "	B.C. 100-177...	" "
" 18....	16.52 K.	" "	B.C. 84-126...	" "
" 24....	17.25 K.	Columbia Ave., Vancouver.	.....	Auto ran under No. 3 gate which was coming down.
" 27....	9.22 K.	Powell St., Vancouver.	B.C. 75-837...	Ignored stop signal.
Dec. 1....	8.25 K.	Columbia Ave., Vancouver.	B.C. 102-131..	After gates down auto ran under No. 3 gate which was coming down, in front of yard engine, latter having to stop to avoid an accident.
" 1....	17.00 K.	" "	B.C. 79-936...	Entered crossing after south gate was down and had to stay inside until train cleared crossing.
" 1....	17.30 K.	" "	.....	After gates No. 1 and 2 were down, four autos ran under No. 3 gate which was coming down.
" 9....	13.13 K.	Powell St., Vancouver.	B.C. 77-663...	Ignored stop signal.
" 10....	10.15 K.	" "	B.C. 73-306...	" "
" 12....	7.40 K.	Columbia Ave., Vancouver.	B.C. 65-189...	Ran under gate which was coming down and had to stay inside as yard engine was coming.
" 16....	16.45 K.	Powell St., Vancouver.	B.C. 70-423...	Ignored stop signal.
" 23....	14.49 K.	" "	B.C. 102-083..	" "
" 23....	22.02 K.	" "	B.C. 84-944...	" "

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY IS INVOLVED, PERIOD JULY 1 TO DECEMBER 31, 1930

MANITOBA DISTRICT

Division	Date	Location	Particulars
Kenora.....	July 21, 1930	Crossing on Earl Pit track $\frac{1}{2}$ mile from main track.	Ford sedan, Ontario licence number JB-856 owned and driven by Mr. J. Neill of Wabigoon, ran into side of car being switched into siding, damaging automobile to the extent of \$62.70. Driver of car claimed he did not see car standing on crossing.
	Oct. 16, 1930	Hazelridge, MP-106-07 Keewatin Subdivision.	Extra west, engine 5346, struck Durant Rugby truck, Manitoba licence number 104-459, belonging to N. L. Kotelo, farmer, Carson Post Office, Manitoba. When truck was going over crossing, lights of truck went out and engine stalled. Driver endeavoured to push the truck off crossing but was unable to get it entirely clear. Owing to there being no lights on the truck, train crew did not see it in time to prevent the damage.
Portage.....	July 4, 1930	Mileage 70-2 Minnedosa Subdivision (Franklin).	Automobile ran into side of engine 983 at public crossing. Slight damage to car. Driver signalled to stop when 100 feet away from track, but failed to get car stopped in time. Visibility good.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY IS INVOLVED, PERIOD JULY 1 TO DECEMBER 31, 1930—*Continued*

MANITOBA DISTRICT—*Concluded*

Division	Date	Location	Particulars
	Sept. 27, 1930	Mileage 78.3 Carberry Subdivision.	Water tank wagon left foul of eastbound track when reach of wagon broke, and was struck by extra east 845. It was dark at time and obstruction could not be seen by crew of extra 845. Slight damage to wagon.
	Oct. 12, 1930	Mileage 61.1 Minnedosa Subdivision.	Auto truck ran into side of car in extra east 961 which had stopped for inspection. Slight damage to car. Driver stated he did not see train.
	Nov. 24, 1930	Mileage 57.7 Carberry Subdivision.	Ford sedan approached track from south and driver failed to stop clear of rail on eastbound track, front wheel struck by engine on train No. 54, slight damage to automobile.
	Dec. 3, 1930	Mileage 1.5 Aisborg Subdivision Manitoba Ave. (Winnipeg).	Auto truck owned by Northwest Laundry was stalled foul of track south of crossing planks. Did not take steps to protect in sufficient time. Slight damage to auto truck.
Brandon.....	Sept. 21, 1930	East of Kemnay MP-8 Broadview Subdivision.	Train No. 1 struck Buick touring car Manitoba licence number 79-365 which had been left between westbound main track and passing track on public crossing. Automobile was considerably damaged. It was owned by E. Jack of Terrance.
	Sept. 20, 1930	Main Street crossing, Minnedosa.	Chevrolet coupe, Manitoba licence number 48-502 driven by Thomas Scott, of Ashville, ran into engine 5780 which was backing over crossing. Mr. Scott admitted it was entirely his own fault, he not having noticed the engine approaching.
	Sept. 25, 1930	Main Street crossing, Minnedosa.	Extra north, engine 1012, was pulling into yard, when Chevrolet coupe Manitoba licence number 59-042, driven by P. Crerar, ran into engine. Front end of automobile damaged.
Souris.....	Sept. 20, 1930	Broadway St., Deloraine, Napinka Subdivision.	While extra west 3034 was switching in Deloraine yard and backing east through passing track with oil tank on head end, Pontiac coach, Manitoba licence number 49-172, owned by Harry Huys, farmer, Deloraine, and driven by Miss Huys, ran into the side of oil tank car, causing considerable damage to automobile.
	Oct. 22, 1930	Crossing MP-69.2, Arcola Subdivision near Wauchope.	Engine 2523, train No. 55, struck and damaged a road grader on public crossing. Grader was being operated by Helmer Johnson and when attempting to pass over crossing the blade of grader caught on south rail of track and held the machine; train 55 was travelling between 35 and 40 miles per hour and was slowing down fast when it struck grader, knocking it clear of track.
Portage.....	Dec. 18, 1930	MP-92 Carberry Subdivision.	Train No. 53, struck sleigh loaded with poles left on private crossing when whiffle-tree broke. Team had been unhitched. Crossing is on curve which prevented engineer seeing obstruction in time to stop.
Souris.....	Sept. 23, 1930	300 feet east of Napinka Station, MP-50.5 Estevan Subdivision.	Engine 2063 in extra west, while moving ahead after being cut off train, struck a Buick coach, Manitoba licence 57-772 owned and driven by Mr. A. A. Bent, farmer, Napinka, causing slight damage to automobile.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY IS INVOLVED, PRIOR JULY 1 DECEMBER 31, 1930—*Continued*

SASKATCHEWAN DISTRICT

Division	Date	Location	Particulars
Regina.....	July 1.....	Milestone Yard, Portal Subdivision.	Train Second No. 5, Engine 2654, struck Studebaker sedan, Sask. licence 17-567, driven by Viola Mollekin.
	Oct. 22.....	Wolseley Yard, Indian Head Subdivision.	Durant coupe, Sask. licence 3-844, driven by W. C. Tapp, Wolseley, ran into side of Extra West 5156.
Moose Jaw.....	Aug. 26.....	M.P. 69-5 Kerrobert Subdivision.	International auto truck driven by F. H. Hart of Stranraer, drove into side of Train Extra North 935, striking C. P. 45225, fifth car from rear of train, breaking side ladder on side of box car and damaging right fender of auto and back of grain tank.
	Oct. 16.....	Three poles east of Mileage 16 Swift Current Subdivision.	Gray Dort touring car driven by William Wilson, drove on to crossing, striking engine 2708, of Train No. 66, on left side at cylinder casing, breaking left front wheel off automobile, also left front headlight, and bending left front fender.
Saskatoon.....	Aug. 2.....	West end of Elstow Yard, Sutherland Subdivision.	Struck Ford truck. Failure of driver to see or hear Train No. 306, Engine 2076.
	Oct. 4.....	One-quarter mile east of Castlewood, Wilkie Subdivision.	Team of horses became frightened and running away, ran into Engine 627 (Train Extra West), just below cab. One horse killed and wagon pole broken. No one in charge of horses at time.
	Oct. 9.....	First crossing west end of Foam Lake Yard, Wynyard Subdivision.	Driver lost control of team and they running away, were struck by Engine 733, Train 978. One horse killed and wagon damaged.

ALBERTA DISTRICT

Lethbridge.....	July 19.....	Victoria St., Blairmore.	Oldsmobile coach, driven by I. Reiss, ran into side of Work Extra 706.
	Sept. 11.....	Victoria St., Blairmore.	Studebaker touring car, driven by R. Kenny, struck by corner of box car, Work Extra 992.
Calgary.....	Dec. 8.....	Hespeler St., Didsbury.	While approaching station about 9 to 10 miles per hour, Train No. 526, engine 2649, struck Essex sedan automobile, Licence No. 38-313, driven by Mr. J. H. Tittsworth of Didsbury, damaging automobile.
	Dec. 20.....	8th St. East, Calgary.	While yard engine 6245 passing slowly over crossing Ford automobile truck, Alberta licence No. 6589, driven by a Mr. Buckley of Okotoks, ran into side of engine tender from the north slightly damaging truck.
Edmonton.....	Nov. 29.....	Camrose.....	While attempting to cross tracks ahead of train Extra West 972, Ford touring car, licence 28-400, driven by Mr. T. Throusdon, was struck.

BRITISH COLUMBIA DISTRICT

Revelstoke.....	Aug. 28.....	Okanagan St. Crossing, Armstrong, B.C.	Ex. North 565, almost over crossing, when Ford touring car, licence B.C. 62-153, owned by Mrs. Simmons, driven by Earl White, struck left cylinder of engine. Auto damaged.
	Oct. 21.....	Barnard Ave. crossing, Vernon, B.C.	Extra south 569, was standing with cars over crossing, when Chevrolet auto, licence B.C. D-341, owned and driven by R. S. Ferguson, ran into C.P. 286400.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY IS INVOLVED, PRIOR JULY 1 TO DECEMBER 31, 1930—*Concluded*

BRITISH COLUMBIA DISTRICT—*Concluded*

Division	Date	Location	Particulars
Vancouver.....	July 11.....	Coquitlam—Shaugnessy St.	Auto B.C. 77-996 struck by slack running out when cars standing near crossing were coupled onto by switch engine 6280.
	Aug. 13.....	Westminster—Front St.	Train No. 818 travelling along Front St., struck auto B.C. 73-902 which backed over track almost immediately in front of train.
	Oct. 21.....	Vancouver—Pender St.	Auto B.C. 25-484 during foggy weather ran into last car of drag handled by yard engine 6252.
Cranbrook.....	Nov. 27.....	Lake Windermere (mile 92.7 Lake Windermere Subdn.)	Ford auto, licence B.C. 64-900, driven by T. Bavin, accompanied by two friends, drove into train No. 821 which was standing on crossing.

ESQUIMALT AND NANAIMO RAILWAY COMPANY

Date	Location	Particulars
Nov. 10, 1930, 13.15 o'clock.	Island Highway crossing, Mile 38.7, Victoria Subdivision, Cowichan Dist.	Ford sedan, licence B.C. 14-655, struck fourth car from engine, Train No. 24, Engine 3266. Slight damage to auto.
Nov. 24, 1930, 22.45 o'clock.	Island Highway crossing, Mile 39.7, first crossing south of Duncan station.	Train was standing still on crossing, and autoist, Ford coupe, B.C. 24-755, ran into flat car. Driver admitted seeing train and was trying to beat it over crossing and failed to see flat cars. Slight damage to auto.
Dec. 17, 1930, 10.15 o'clock.	First crossing east of Port Alberni, mile 38.2.	Motor licence No. B.C. 87-323 ran into side of engine Train No. 8, badly damaging motor car and slight damage to pilot of engine.

CANADIAN PACIFIC RAILWAY—EASTERN LINES

NEW BRUNSWICK DISTRICT

Date	Time	Crossing	Auto No.	Dangerous practice
Dec. 3.....	5.15 p.m...	Douglas Ave. M. 1-8 St. John, S.D.	N.B. 12953.....	Auto dashed under gates while they were being lowered. Driver claimed could not see gates account storm.
Dec. 26.....	5.20 p.m...	Douglas Ave. M. 1-8 St. John, S.D.	N.B. 10199.....	Auto stalled under gates with broken axle.
Jan. 21.....	10.25 a.m...	Douglas Ave. M. 1-8 St. John, S.D.	.....	Auto stalled while in the act of turning on crossing.
Jan. 30.....	3.25 p.m...	Douglas Ave. M. 1-8 St. John, S.D.	N.B. 11147.....	Auto ran under gates while same were being lowered for engine with snow plow.
Dec. 12.....	3.30 p.m...	Fairville Crossing, St. John, S.D.	N.B. 7208.....	Auto passed under west gate when same almost down, crossed tracks to East gate and continued to drive through if gate had not been lifted. As engine had not passed crossing watchman did not raise gate, driver then jumped out of car and gave the gate a hoist in order to pass through.
Dec. 22.....	.....	Fairville Crossing, St. John, S.D.	N.B. 7131.....	Auto broke tip on gate west side of crossing. Gates were down and bell ringing.

QUEBEC DISTRICT

Date	Time	Crossing	Auto No.	Dangerous practice
Jan. 8.....		Portland St., St. Johnsbury, Vt.	Vt. 2280-1931....	Auto struck west gate breaking it in the middle where red light was attached to gate. Driver claimed he did not see crossing gate.
Nov. 9.....		Dorchester St., Quebec.	Que. 13526.....	Gates lowered when auto approaching from north struck and broke north side gate and continued on breaking south side gate. It was raining at time of affair and both lamps on gates burning brightly.
Nov. 15.....		Crown St., Quebec....	Que. 10621.....	Gateman lowered north side gates and was in act of bringing down south side one when an auto running west on Prince Edward St., turned south and went over crossing before gateman could stop gates from going down, with result that iron rod support of gate struck and pierced top of auto.
Nov. 16.....		Crown St., Quebec....	Que. 16300.....	Gateman lowered north side gates in order to light lamp on east arm. Car appeared from south travelling north, signal was given to stop but car continued on breaking northeast gate. Weather clear.
Nov. 25.....		St. Valier St., Quebec.	Que. H-1579....	Gates were in upright position when auto, which was on left hand side of road, passed too close to northwest gate arm in turning into Verdun St. resulting in auto top catching gate and breaking board full length of gate.
Dec. 3.....		Crown St., Quebec....	Que. 10767.....	All gates had been lowered for switch engine when auto approached crossing from south at moderate speed, but failed to stop, striking and breaking southeast gate. Car stopped on railway crossing and backed in time to clear switching engine.
Dec. 23.....		Crown St., Quebec....	Que. 15519.....	Gates lowered for yard engine when auto approaching from south to north struck gate on southeast side breaking same in two. Car was travelling about 25 miles an hour when it struck the gate.
Jan. 4.....		St Valier St., Quebec.	Que. F-702.....	Gates were fully raised when auto truck struck and broke pedestal and gate arm on northeast side. Truck at the time was backing out on Verdun St.
Jan. 6.....		Crown St., Quebec....	Que. 12771.....	Gates lowered for freight train and when gateman was using lever to raise north side gate after train had passed, found same not working properly. On investigating he discovered that an auto, which was standing on north side of crossing, had broken both gates and lantern.
Jan. 8.....		Bridge St., Quebec....		North gates had been lowered by gateman and was in the act of lowering south gates when a runaway horse and rig attached, struck and broke northeast gate and stopped on other side of crossing when rig became jammed between a pole and side of house.
Jan. 17.....		St. Valier St., Quebec.	Snowco No. 1...	North side gates lowered and gateman was preparing to lower south side when truck from north struck and broke gate which was down and then continued over crossing.

QUEBEC DISTRICT—*Concluded*

Date	Time	Crossing	Auto No.	Dangerous Practices
Nov. 12.....		Montcalm St., Hull...	Ont. OW-107...	Automobile travelling at rate of 20 miles per hour, on approaching lowered gates endeavoured to stop but speed too great, resulting in car skidding and running through gates, which had been lowered for approaching train.
Jan. 5.....		Montcalm St., Hull.....		Gates were lowered for approaching train when auto travelling at speed of about 30 miles per hour, failed to stop and ran through gates.
Dec. 31.....		Raglin St., Renfrew..	Ont. LZ-282....	Car approached crossing from north side and driver applied brakes about 25 feet from crossing but car skidded and gates swung sufficient to allow car to go by.

O TARIO DISTRICT

Nov. 10.....	5.10 p.m....	Mil. 18-04 Oshawa S.D.	Ont. 15-225-C...	Auto drove up to crossing in face of approaching train and collided with side of engine. Headlight was burning and crossing signals were sounded.
Nov. 28....	4.25 p.m....	Maria St., Peterboro.....		Horse and wagon tried to beat freight train over crossing. Wagon was struck by engine.
Dec. 5.....	5.15 p.m....	Agincourt.....	Ont. 108-1.....	Auto drove up to crossing while freight train passing, unable to stop and had to run alongside train on right-of-way to avoid collision.
Dec. 31.....	1.40 p.m....	Ivanhoe.....	Ont. 55914-C....	Auto drove up to crossing in snow storm when freight train approaching. Saw could not stop, applied brake and jumped clear while truck skidded into collision with engine.
Jan. 11.....	6.30 p.m....	Mil. 84-3 Oshawa S.D.	E.T. 177.....	Auto ran into side of passing freight train without knowledge of train or engine crew. Auto damaged and five occupants shaken up.
Dec. 2.....	9.30 a.m....	St. Clair Ave., Toronto.	Ont. 63711-C....	When gateman lowering gates, truck turned over to left side of road, breaking gate.
Jan. 30.....	3.30 p.m....	St. Clair Ave., Toronto.	Ont. H. 7603 (1931)	When train approaching crossing, car came through east gates and stopped between tracks. Gate on northwest side was still up, but when car did not go, gateman started to lower gate, when car was driven into it and broke it.
Jan. 30.....	4.45 p.m....	St. Clair Ave., Toronto.	Ont. 7011C (1931)	When train was coming west, gateman rang gong before he lowered gates, and as he was lowering southeast gate, truck failed to stop and went through gate and broke it. Flagman was there with "stop" signal but truck came right on. When truck driver was asked if he did not hear bell, he said he did not go by bells.
Nov. 28.....		Dufferin St., Toronto.	Ont. B-3033.....	Auto ran into gate breaking off point.
Nov. 21.....		Lansdowne Ave., Toronto.	Ont. KE-850....	Automobile ran into and damaged crossing gates.
Dec. 17.....		Peter St., Toronto....	Ont. 11199C ...	Motor truck struck and broke the railway crossing sign.
Nov. 2.....	10.50 p.m....	Adelaide St., London.	Ont. M. 1965....	Auto mistook watchman's stop signal for proceed signal and was struck by cars being switched over crossing.
Nov. 6.....	6.05 p.m....	Richmond St., London.	Ont. 28436 C....	Truck skidded on slippery pavement into gate arm breaking it.
Nov. 9.....	7.25 p.m....	Queen St., Chatham..	Ont.....	Auto going south broke 3 feet off northwest gate arm.

ONTARIO DISTRICT—*Concluded*

Date	Time	Crossing	Auto No.	Dangerous Practices
Nov. 13.....	1.20 p.m...	William St., Chatham	Ont. AE 190.....	Driver of auto went around end of gate arm and struck track motor car damaging it and injuring operator.
Nov. 14.....	4.35 p.m...	Quebec St., London...	Ont. M-924.....	Auto disregarded watchman's stop signal and narrowly avoided being struck by engine.
Nov. 17.....	11.22 a.m...	Quebec St., London..	Ont. L. 5092.....	Auto disregarded watchman's stop sign and crossed tracks in front of cars being switched over crossing.
Nov. 16.....	10.00 a.m...	Richmond St., London.	Ont. 39-528 C...	Auto truck failed to observe gates being lowered and crashed into north gate arm, breaking it.
" 19.....	6.10 p.m...	Thames St., Ingersoll.	Ont. A-5616.....	Auto travelling at fast rate in fog crashed into and broke north gate arm.
" 25.....	9.15 a.m...	Richmond St., London.	Ont. M-6521.....	Auto skidded on slippery pavement into gate arm breaking it, also windshield of car.
" 27.....	6.45 a.m...	Richmond St., London.	Ont. L-2133.....	Taxi drove deliberately up on to sidewalk and broke gate arm over sidewalk in order to avoid being detained at barrier.
" 27.....	6.07 p.m...	Quebec St., London..	Ont. L-9306.....	Auto disregarded watchman's stop sign with yard engine only 10 yards away.
" 29.....	6.15 p.m...	Richmond St., London.	Ont. L-4983.....	Gates were down and auto ran through southeast gate, breaking it off, and ran into north gate arm, breaking it.
Dec. 3.....	6.35 p.m...	Richmond St., London.	Ont. M-3575.....	Auto ran into southwest gate arm. Driver admitted seeing red light on gate but unable to stop in time.
" 4.....	6.55 a.m...	Quebec St., London..	Mich. 283622.....	Auto ran into front footboard of engine.
" 19.....	12.45 a.m...	Quebec St., London..	Ont. L-2411.....	Auto disregarded watchman's stop signal and crossed tracks in front of yard engine.
" 22.....	11.45 p.m...	Waterloo St., London.	Ont. M-1570.....	Auto skidded on slippery pavement and crashed into crossing gate arms, breaking them.
" 20.....	5.30 a.m...	Ann St., London.....	Ont. M-1362.....	Taxi cab ran into gate arm, breaking it off.
" 24.....	4.45 p.m...	Thames St., Ingersoll	Ont. L-5838.....	Auto driven at fast rate unable to stop in time and ran through gate arms.
" 25.....	5.02 a.m...	Thames St., Ingersoll	.....	Auto crashed through both gate arms, breaking them.
" 29.....	10.40 p.m...	Waterloo St., London.	Mich. 1-048-11..	Auto failed to hear crossing bell or notice gates were down in time and skidded into gate arm, breaking it.

TORONTO, HAMILTON AND BUFFALO RAILWAY CO.

Feb. 18.....	2.25 p.m...	James St., Hamilton, Ont.	P-6345.....	Drove through gate, breaking same.
Mar. 25.....	9.45 p.m...	James St., Hamilton, Ont.	.....	Ran into gate, breaking same.
April 11.....	12.30 a.m...	James St., Hamilton, Ont.	.....	North and south gates broken; travelling very fast. Did not stop.
" 13.....	9.50 p.m...	James and Hunter Sts. Hamilton, Ont.	39534-C.....	Crashed through gates, breaking same. Claims he didn't see them.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, May 15, 1931

No. 5

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

OTTAWA, April 28, 1931.

FIRE-GUARD REQUIREMENTS

To

The Canadian Pacific Railway Company,
The Canadian National Railways,
The Great Northern Railway Company,
The Northern Alberta Railways Company.

In accordance with section 281 of the Railway Act and Regulation 10 of General Order No. 362 of the Board, you are required to establish and maintain fire-guards on both sides of your right of way in the provinces of Alberta, Saskatchewan, and Manitoba, as follows:—

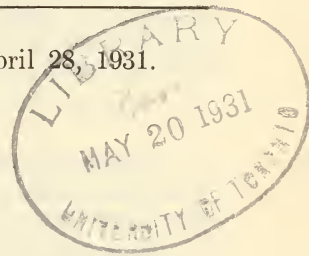
SECTION A—CULTIVATED LANDS

Clause 1.—This classification shall include grain stubble lands and lands cultivated and sown or planted to tame grasses, such as timothy, brome, clover, alfalfa, etc.

Clause 2.—On such lands, provision shall be made for the ploughing of fire-guards wherever necessary in the opinion of the owner or occupant of such land, and where the owner or occupant shall, immediately following the cutting of the crop, take the initiative and plough such fire-guard, four feet in width, at a distance of approximately one hundred feet from the main track, for a remuneration of \$1.75 per lineal mile of four-foot ploughed fire-guard, it being understood that the minimum amount to be paid in any case shall be one dollar. Agreement with the land owner or occupant for payment in old ties will be considered an acceptable substitute for payment in cash.

Clause 3.—The ploughing of fire-guards is not required on lands devoted to non-combustible crops.

Clause 4.—As to portions of lines where the right of way adjoins lands devoted to grain crops, the company shall, unless exempted by the Board's Chief Fire Inspector, extend right of way burning operations to include also the strip between the right of way and the edge of cultivation, provided that this requirement shall not apply more than ten feet outside the right of way on private land, and that it is not necessary to cut vegetation or to clear heavy debris on this strip.



SECTION B—FENCED GRAZING LANDS

Clause 1.—This classification shall include uncultivated fenced lands, used for grazing, or from which wild hay is cut.

Clause 2.—On such lands, fire-guards shall be constructed or maintained in the form of a ploughed strip not less than eight feet in width. Where such fire-guards have been constructed in the past at a distance of from 150 to 250 feet from the track, they shall be maintained in the same location. Otherwise, construction shall be at a distance of approximately 200 feet from the main track.

Clause 3.—All dead or dry grass and other unnecessary combustible matter shall be burned or otherwise removed from the right of way. Burning outside the right of way is not required under this classification.

Clause 4.—Wherever the owner or occupant of land in this classification objects to the construction or maintenance of fire-guards as above prescribed, the company shall refrain from doing such work. If the company desires the permission of the Board to enter on such land for the purpose of constructing or maintaining such fire-guards notwithstanding such objection by owner or occupant, it shall immediately make application to the Board for such permission, stating name and address of such owner or occupant and describing the land by legal subdivision and railway mileage.

SECTION C—WILD LANDS

Clause 1.—This classification shall include uncultivated, unfenced lands, and also uncultivated fenced lands not used for grazing and from which wild hay is not cut.

Clause 2.—On such lands, fire-guards shall be constructed or maintained in the form of a ploughed strip not less than eight feet in width. Where such fire-guards have been constructed in the past at a distance of from 200 to 400 feet from the track, they shall be maintained in the same location. Otherwise, construction shall be at a distance of approximately 200 feet from the main track.

Clause 3.—All dead or dry grass and other unnecessary combustible matter shall be burned or otherwise removed, between the fire-guard and the track. Where the ploughing of fire-guards is impracticable on account of the ground being too stony or rocky, or too hilly or broken to plough, the dead or dry grass and other unnecessary combustible matter shall be burned off on a strip extending 200 feet from the track, except where the railway company shall show to the satisfaction of the Board's Chief Fire Inspector that no fire-hazard exists.

Clause 4.—Under the provisions of the Railway Act and of the Board's order, the consent of the owner or occupant of private land coming under this classification is not essential in connection with either the ploughing of fire-guards or the burning off of grass between the fire-guard and the main track as above prescribed.

SECTION D—ADDITIONAL PROVISIONS

Clause 1.—Where there are alternating classifications of lands, every effort shall be made to have the fire-guards connected to make an unbroken continuous fire-guard. Where this is not practicable, the ends of the constructed portions of the fire-guard, irrespective of the classification, shall be turned into the right of way.

Clause 2.—The construction of fire-guards shall be completed, as above specified, before the grass shall have become inflammable, and in any event not later than the 15th day of August, except as to cultivated lands, where the requirements for this classification shall govern.

Clause 3.—After fire-guards have been constructed, they shall be maintained in an efficient condition.

Clause 4.—These requirements shall apply to lines under construction in the provinces named, the same as to lines under operation, fire-guards to be constructed as steel is laid.

Clause 5.—The foregoing requirements shall apply to all lines in the provinces named over which the Board exercises jurisdiction, except those parts for which exemption shall have been at some time requested by the railway and approved by the Chief Fire Inspector of the Board. When exemption charts have been so approved, they shall constitute a record of lands where it is impracticable or unnecessary to construct fire-guards; such exemptions, when so approved, to continue in full force and effect until and unless rescinded or amended through formal notice served upon the railway company affected. Exemption charts shall be submitted in triplicate.

Clause 6.—The following reasons will be considered in connection with requests for exemption from the necessity of ploughing fire-guards: ground too stony or rocky or too hilly or broken to plough; timber or scrub; poplar (where ploughing impracticable); swamp, muskeg or sloughs (where permanently wet and too large to plough around); cities and villages (only where ploughing is impracticable); climatic conditions; general adverse public sentiment; and the following where width and location are such as to constitute an efficient fire-guard: irrigation canals, rivers, ditches, lakes, creeks, graded roadways, or other railway grades parallel to the company's tracks.

Clause 7.—The company shall submit to the Chief Fire Inspector of the Board at Ottawa, not later than December 31 of the current year, an annual fire-guard statistical report showing by subdivisions the mileage of fire-guards actually constructed or maintained during the current year in the fenced grazing lands and wild lands classifications, together with a statement by subdivisions showing the reasons, in cases where there shall have been failure to comply fully with the requirements as to the construction or maintenance of fire-guards in these two classifications.

CLYDE LEAVITT,
Chief Fire Inspector, B.R.C.

ORDER No. 46576

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

FRIDAY, the 24th day of April, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

The Board orders: That the tolls published in

Supplement 14 to Tariff C.R.C. No. E-1228

Supplement 31 to Tariff C.R.C. No. E-1240

Supplement 30 to Tariff C.R.C. No. E-1244

Supplement 13 to Tariff C.R.C. No. E-1253

filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46572

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

MONDAY, the 27th day of April, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 125 of Supplement No. 28 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 125 of Supplement No. 28 to Tariff C.R.C. No. 817, approved herein, is $7\frac{1}{2}$ cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46573

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

MONDAY, the 27th day of April, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published to Wolfville, Port Williams, and Kentville, Nova Scotia, in item 245-A of Supplement No. 6 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 245-A of Supplement No. 6 to Tariff C.R.C. No. 856, approved herein, are as follows:—

To	Rates in cents per hundred pounds
Wolfville, N.S.	12½
Port Williams, N.S.	12½
Kentville, N.S.	16½

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46574

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

MONDAY, the 27th day of April, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 7-A of Supplement No. 13 to tariff C.R.C. No. 815, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 7-A of Supplement No. 13 to Tariff C.R.C. No. 815, approved herein, is 9½ cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46568

In the matter of the Order of the Board No. 46516, dated April 13, 1931, permitting H. G. Toll, Agent of the Transcontinental Freight Bureau, acting under powers of attorney, to file upon twenty days' notice, effective June 1, 1931, supplements to his tariffs C.R.C. Nos. 563, 566, 571, 572, 573, and 587, increasing rates on grain, grain products, and seeds.

File No. 27612.53

TUESDAY, the 28th day of April, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner*

Upon reading the submissions filed on behalf of the Transcontinental Freight Bureau, and the report and recommendation of the Assistant Chief Traffic Officer of the Board—

It is ordered: That the said Order No. 46516, dated April 13, 1931, be, and it is hereby, amended by striking out the word "twenty" in the third line of the operative part of the order and substituting therefor the word "fifteen."

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46571

In the matter of tariffs, and supplements to, tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

WEDNESDAY, the 29th day of April, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 43 to Tariff C.R.C. No. E-1235

Supplement 14 to Tariff C.R.C. No. E-1238

Tariff C.R.C. No. E-1737

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46585

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of tariffs C.R.C. Nos. 4 and 5, and Supplement 1 to C.R.C. No. 1, covering the tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

FRIDAY, the 1st day of May, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' tariffs C.R.C. Nos. 4 and 5, and Supplement 1 to C.R.C. No. 1, covering the tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and they are hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF FEBRUARY, 1931

Railway accidents 143, involving 22 persons killed and 130 injured.
 Railway accidents at highway crossings.... 24, involving 11 persons killed and 29 injured.

	Killed	Injured
Passengers..	3	19
Employees..	7	95
Others..	23	45
	<hr/> 33	<hr/> 159

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

PROVINCE OF NOVA SCOTIA

- 1 Automobile—Ran into side of train. N.S. licence 74626.

PROVINCE OF QUEBEC

- 2 Automobile—Que. licence 60-540; Ont. licence BF-165.
 1 Horse-drawn vehicle—Cover on sleigh obscured driver's view of train.
 1 Pedestrian—Passed under gates in lowered position.
 1 Pedestrian.

PROVINCE OF ONTARIO

- 5 Automobile—Auto ran into side of train. Ontario licences FS-958, 55838-C, V-2502, V-3550, NF-216.
 2 Automobile—Excessive speed of auto. Ontario licences V-2518, JU-166.
 1 Automobile—Auto driver disregarded signals. Ontario licence CL-208.
 1 Automobile—Auto driver's attention centred on train in siding, failed to notice approaching train. Ontario licence FB-366.
 1 Automobile—Auto skidded and stalled on crossing. Ontario licence 49380-C.
 1 Automobile—Truck towing disabled truck stalled on crossing. Ontario licences 67360-C, 52397-C.
 2 Automobile—Ontario licences NN-73, DM-699.

PROVINCE OF MANITOBA

- 2 Automobile—Manitoba licences 11-35-73, 42-231.

PROVINCE OF SASKATCHEWAN

- 1 Automobile—Ran into side of train. Manitoba licence 1-930.
 1 Automobile—Sask. licence 76680.

PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—B.C. licence 88-988.

Of the twenty-four accidents at highway crossings, eight occurred at protected crossings and sixteen at unprotected crossings. Fourteen of the accidents occurred during the daylight hours and ten at night.

OTTAWA, April 28, 1931.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, June 1, 1931

No. 6

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ORDER No. 46595

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement "P" to Express Classification for Canada No. 7, on file with the Board under file No. 4397.106.

MONDAY, the 4th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the proposed Supplement "P" to Express Classification for Canada No. 7, filed by C. N. Ham, Secretary of the Express Traffic Association of Canada, on file with the Board under file No. 4397.106, be, and it is hereby, approved; the said supplement to be published as No. 17 to Express Classification for Canada No. 7.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46603

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 6th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 861, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 861, approved herein, are as follows, namely:—

To	Rates in cents per 100 pounds
*Saint John, New Brunswick	18
Scuth Bay, New Brunswick	21
Grand Bay, New Brunswick	21
Nerepis, New Brunswick	21½
Blagdon, New Brunswick	21½
Welsford, New Brunswick	22
Clarendon, New Brunswick	22
Wirral, New Brunswick	22½
Emiskillen, New Brunswick	22½
Hoyt, New Brunswick	22½
Bailey, New Brunswick	23½
Fredericton Junction, New Brunswick	23½
Tracey, New Brunswick	23½
Rooth, New Brunswick	24½
Cork, New Brunswick	24½
West Saint John, New Brunswick	21½
Fredericton, New Brunswick	20½
Bonney River, New Brunswick	24½
Lepreaux, New Brunswick	22
Musquash, New Brunswick	21½
Taylors, New Brunswick	21½
Allan Cot, New Brunswick	21½
Spruce Lake, New Brunswick	21
Deer Lake, New Brunswick	27
Shogomac, New Brunswick	27
Canterbury, New Brunswick	26½
Marne, New Brunswick	26½
Scott, New Brunswick	26½
Benton, New Brunswick	26
Oak, New Brunswick	26
Wickham, New Brunswick	26
Debec, New Brunswick	26
Woodstock, New Brunswick	22½
Upper Woodstock, New Brunswick	25½
Newburg, New Brunswick	25½
Nixon, New Brunswick	25½
Deep Creek, New Brunswick	26
Hartland, New Brunswick	26
Hale, New Brunswick	26
Peel, New Brunswick	26
Stickney, New Brunswick	26
Florenceville, New Brunswick	26½
Bristol, New Brunswick	26½
Bath, New Brunswick	26½
Beechwood, New Brunswick	27
Upper Kent, New Brunswick	27
River de Chute, New Brunswick	27
Muniac, New Brunswick	28
Kilburn, New Brunswick	28
Perth Junction, New Brunswick	27
Andover, New Brunswick	27
Aroostook, New Brunswick	27
Morrill, New Brunswick	26½
Limestone, New Brunswick	26½
Ortonville, New Brunswick	26
Argosy, New Brunswick	26
Grand Falls, New Brunswick	22½
Martin, New Brunswick	22½
St. Leonards, New Brunswick	22½
Sigas, New Brunswick	22½

*Dominion Atlantic Railway proportion to be reported at 7·1 cents per 100 pounds, normal proportion 8·9 cents per 100 pounds.

To	Rates in cents per 100 pounds
Quisibis, New Brunswick	23 $\frac{1}{2}$
Theriault, New Brunswick	23 $\frac{1}{2}$
La Pointe, New Brunswick	23 $\frac{1}{2}$
Green River, New Brunswick	23 $\frac{1}{2}$
St. Basil, New Brunswick	23 $\frac{1}{2}$
Edmunston, New Brunswick	23 $\frac{1}{2}$
Elmwood, New Brunswick	26
Green Road, New Brunswick	26
McKenna, New Brunswick	25 $\frac{1}{2}$
Shewan, New Brunswick	26
Carr, New Brunswick	26
County Line, New Brunswick	26
Nackawic, New Brunswick	26 $\frac{1}{2}$
Millville, New Brunswick	26 $\frac{1}{2}$
Southampton, New Brunswick	26 $\frac{1}{2}$
Hainesville, New Brunswick	26 $\frac{1}{2}$
Cahill, New Brunswick	25
Hayne, New Brunswick	24 $\frac{1}{2}$
Stoneridge, New Brunswick	24 $\frac{1}{2}$
Zealand, New Brunswick	24 $\frac{1}{2}$
Keswick, New Brunswick	24
Clanfield, New Brunswick	23 $\frac{1}{2}$
Caverhill, New Brunswick	26
Pinder, New Brunswick	26
Cullerton, New Brunswick	26
Otis, New Brunswick	27
Tobique Narrows, New Brunswick	28
Rowena, New Brunswick	28
Currie, New Brunswick	28
Hillside, New Brunswick	28
Red Rapids, New Brunswick	29
Lieford, New Brunswick	29
Arthwrette, New Brunswick	29
Odel River, New Brunswick	29
Beveridge, New Brunswick	29
Reid's Island, New Brunswick	29
Three Brooks, New Brunswick	29
Wapske, New Brunswick	22 $\frac{1}{2}$
Arbuckle, New Brunswick	22 $\frac{1}{2}$
Plaster Rock, New Brunswick	22 $\frac{1}{2}$
Tinker, New Brunswick	27

One and one-half cent per 100 pounds to be deducted from the above normal rates account of water transportation.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46604

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 6th day of May, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.
J. A. STONEMAN, Commissioner.

The Board orders:

1. That the tolls published in item 273-A of Supplement No. 38 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 273-A of Supplement No. 38 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Abbotsford, Quebec	23½
Abercorn, Quebec	23½
Adamsville, Quebec	23½
Adirondack Junction, Quebec	26
Bedford, Quebec	23½
Chicoines, Quebec	23½
Cookshire, Quebec	22½
Covansville, Quebec	23½
Delaire, Quebec	22½
Drummondville, Quebec	26
Enlaugra, Quebec	23½
Glenton, Quebec	23½
Highwater, Quebec	23½
Iberville, Quebec	26
Iberville Junction, Quebec	26
Melvina, Quebec	22½
Mansonville, Quebec	23½
Mapledale, Quebec	23½
Megantic, Quebec	20½
Orford Lake, Quebec	23½
Ross, Quebec	20½
St. Gregoire, Quebec	23½
St. Guillaume, Quebec	26
St. Hyacinthe, Quebec	26
St. Pie, Quebec	26
Ste. Rosalie, Quebec	26
Ste. Rosalie Junction, Quebec	26
Sherbrooke, Quebec	22½
Stanbridge, Quebec	26
Toronto, Ontario	37½
Tourville, Quebec	26
Windsor Mills, Quebec	23½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46598

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

FRIDAY, the 8th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll on coal from Minto and Iron Bound Cove, New Brunswick, to Fredericton, New Brunswick, published in Supplement No. 10 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 10 to Tariff C.R.C. No. 160, approved herein, is \$1.20 per net ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46597

In the matter of the application of the Detroit International Bridge Company, hereinafter called the "Applicant Company," for approval of its Tariff C.R.C. No. 4, cancelling C.R.C. No. 3, covering the tolls to be charged in respect of the Ambassador Bridge across the Detroit River between the Town of Sandwich, in the Province of Ontario, and the City of Detroit, in the State of Michigan, on file with the Board under file No. 36795.2.

SATURDAY, the 9th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Tariff C.R.C. No. 4, cancelling C.R.C. No. 3, covering the tolls to be charged in respect of the Ambassador bridge across the Detroit river between the town of Sandwich, in the province of Ontario, and the city of Detroit, in the state of Michigan, on file with the Board under file No. 36795.2, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46622

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic that portion of its Crossfield Northwesterly Branch, mileage 0 to mileage 28.

File No. 37252.14

TUESDAY, the 12th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Crossfield Northwesterly Branch from mileage 0 to mileage 28.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46625

In the matter of the Order of the Board No. 45634, dated October 25, 1930, providing that, subject to the grain traffic having priority, the coal movements during the year 1930 shall be from the 25th day of October, to end December 1, 1930; and that a rate of \$6.75 per ton on coal movements provided for under Orders in Council P.C. 439, dated March 16, 1928, and P.C. 1268, dated June 5, 1930, be established, to be effective from the 25th day of October to the 1st day of December, 1930, both inclusive. And in the matter of the application for an Order extending the time within which the said coal movements may be performed.

File No. 27425.90

TUESDAY, the 12th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
 Hon. T. C. NORRIS, *Commissioner.*
 J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed and the consents of the Canadian Pacific and the Canadian National Railway Companies, filed,—

The Board orders: That, subject to the condition that, if the grain movement this fall assumes normal proportions, the movement under the special coal rate will be suspended until after the close of navigation, the period of coal movements during the year 1931-32 be, and it is hereby, fixed to commence the 31st day of July, 1931, and to end the 31st day of March, 1932, both inclusive.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46649

In the matter of the application of H. G. Toll, Agent, Transcontinental Freight Bureau, Chicago, Illinois, for permission to file on less than statutory notice supplements to transcontinental tariffs increasing international rates on grain, grain products, and seeds.

File No. 27612.53

WEDNESDAY, the 13th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*

Upon its appearing that the Order of the Interstate Commerce Commission in Docket 17,000 (Part 7), rate structure investigation, grain and grain products within western district and for export, dated July 1, 1930 (as amended), requires readjustment of rates on those commodities, effective June 1, 1931, and, conformably therewith, changes in rates are also necessary from points in Canada to points in the United States, from points in the United States to points in Canada, and between points in the United States through Canada,—

The Board orders: That H. G. Toll, Agent of the Transcontinental Freight Bureau, acting under powers of attorney, be, and he is hereby, permitted to file upon fifteen days' notice, effective June 1, 1931, supplements to his Tariffs C.R.C. Nos. 563, 566, 571, 572, 573, 587, and 580, increasing rates on grain, grain products, and seeds; and that Orders Nos. 45892, 46323, 46516, and 46568, dated respectively December 5, 1930, February 23, 1931, April 13, 1931, and April 28, 1931, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, June 15, 1931

No. 7

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Application of the Toronto, Hamilton & Buffalo Railway Company, under Section 188 of the Railway Act, for authority to remove the station building at Vaughan, from its present location, being mileage 5·17 from Smithville, to mileage 4·34, and approving of the new location of the station of the Applicant Company in the Township of Gainsboro, in the County of Lincoln and Province of Ontario.

File No. 24560.37

JUDGMENT

COMMISSIONER STONEMAN:

The Toronto, Hamilton and Buffalo Railway Company by its application dated January 28, 1931, applied to the Board for an order, under section 188 of the Railway Act, for authority to remove the station building at Vaughan, from its present location, being mileage 5·17 from Smithville northerly to Silver street, at mileage 4·34, and approving of the new location of the station of the applicant company, in the township of Gainsboro, in the county of Lincoln and province of Ontario, in accordance with the plan filed with the Board.

By order of the Board No. 23068, dated December 31, 1914, the Board approved of the location of the station and the station building of the Toronto, Hamilton and Buffalo Railway Company at Diltz; and, by order of the Board No. 23107, dated January 8, 1915, the Board approved of the location of the station and station buildings of this company at Vaughan. Subsequently, by order of the Board No. 24005, dated July 26, 1915, the Board authorized the exchange of the station buildings, whereby the station building at Diltz was moved to Vaughan and the station building at Vaughan was moved to Diltz.

The railway company desires to move the station building at Vaughan, now located at mileage 5·17 from Smithville northerly to mileage 4·34, for the following reasons:—

(a) The road allowance between concessions 3 and 4, in the township of Gainsboro, known as Silver street, is now an improved county highway. The present station building is now located at or near the road allowance between concessions 2 and 3 of the said township, which road is an unimproved one. Silver street connects with the provincial highway system at Bismark, a distance of three miles east of the proposed new location, and is a better

location in respect of convenience to shippers and the general public, and being located on an improved highway, accessibility to the station and to the railway facilities will be greatly improved.

(b) The new location of the station and the station facilities will render more efficient the operation of the railway inasmuch as it is located approximately midway between Smithsville and Port Davidson, the distance between these stations being 7.68 miles.

(c) During the construction season of 1930, the railway company constructed a through siding for the handling of stone and other road materials for road improvement work in this territory, immediately north of Silver street; the present location being found unsuitable by the consignees and shippers, and it is now desired to establish this siding for team track purposes and for the passing of trains.

(d) The railway company's station consists of a building about 10 feet 6 inches by 14 feet 0 inches and will be conveniently placed with respect to Silver street, and which the company contends will better serve the interests of the travelling public.

(e) The railway company has secured an option on additional land which will be required for team track purposes. The land consists of a strip 40 feet in width by 846 feet 9 inches in length, as shown in red on the plan filed. The rights of the owner of this land to a farm crossing across the original right of way will be released.

The Corporation of the Township of Gainsboro was served with notice of the application on January 30, 1931, and on February 10 they forwarded to the Board copy of a resolution passed by the Municipal Council on February 9, protesting against the removal of the station of the Toronto, Hamilton and Buffalo Railway Company from Vaughan to Silver street, as they consider the present location of the station far more adequate for the travelling and shipping public.

An Inspector of the Board, in company with the superintendent of the Toronto, Hamilton and Buffalo Railway Company and the clerk of the Township of Gainsboro, made an inspection, Friday, March 13, 1931. On March 26, 1931, the clerk of the township was written to and advised that as a result of the inspection made by the Board's officer the Board considered the new location to be more central, between Smithsville and Port Davidson. The municipality was asked for its submissions, within ten days, showing cause to the contrary.

On April 3, 1931, the Municipality of the Township of Gainsboro acknowledged the Board's letter and forwarded a petition of the ratepayers, signed by twenty-five residents of the locality, and in which they recite seven specific reasons why the station should not be removed from Vaughan to Silver street, and they request that the application be disallowed. This petition was followed by a subsequent one, dated April 23, 1931, and signed by 126 residents of the district, and forwarded to the Board by one Charlie Swingle, which specifies five reasons why the station should be maintained in its present location.

The Board's Chief Operating Officer on May 7, 1931, in company with the Inspector of the Board, visited both the present and proposed site. At the present site, at Vaughan the station shelter is properly located close to the main line, and there is a stub siding with a capacity for about eight cars. There is, at that point, some extra land fenced in to provide station grounds, and the stub siding itself seems to be a little outside of the right of way line. The station building is within the limits of the right of way line. The roadway, over which the Board's officers drove from Silver street to the proposed site is gravelled, while the concession line or township road crossing the railway there and extending to the provincial highway in either direction is not improved, and it is quite evident that during wet weather it would be much heavier going for vehicles than the improved roadway on Silver street.

The proposed site, located on Silver street shows Silver street as an improved highway, with tarvia or some such other improved surfacing as is used on secondary highways, and it extends from one provincial highway to the other. The view at the crossing and where the station would be located is clear in all directions. The railway company has a siding apparently capable of holding twenty-five or thirty cars, which would only require a team roadway to be constructed to make it quite suitable for carload traffic.

The distance between the two sites is approximately three-quarters of a mile, and the proposed site would make a much better distribution as to the distances between the adjoining stations of Smithville and Port Davidson.

A statement of the freight tonnage and earnings received and forwarded at Vaughan station for the years 1929-30 shows that, during eight months of the year that station did not handle one shipment. The inward and outward passenger earnings for the year 1930 amounted to only \$169.18, and the average passenger travel to and from this station is less than one a day. During the year 1930 the railway company handled approximately 480 cars of stone on the track which they located on the main highway at Silver street, and they expect to handle considerably more of this traffic from that siding this coming year.

I have given careful consideration to all that has been submitted in the present application. The Board has had the benefit of inspections made on the ground and the reports of its officers. From all that now appears on the records, I am of the opinion that the Toronto, Hamilton and Buffalo Railway Company's proposal to move its station from its present location at Vaughan, in the township of Gainsboro and county of Lincoln, to the proposed site at Silver street, should be allowed, and I would so rule.

Order to issue granting the application.

Assistant Chief Commissioner McLean and Commissioner Norris concurred.
OTTAWA, May 26, 1931.

ORDER No. 46758

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, for authority to move the station building at Vaughan, in the township of Gainsboro, county of Lincoln, and province of Ontario, from its present location at mileage 5.17 from Smithville to a new location at mileage 4.34, as shown on the plan dated Hamilton, January 2, 1931, on file with the Board under file No. 24560.37.

TUESDAY, the 2nd day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of residents of the township of Gainsboro and the council of the said township; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is Ordered: That the applicant company be, and it is hereby, authorized to move the station building at Vaughan, in the township of Gainsboro, county of Lincoln, and province of Ontario, from its present location at mileage 5.17 to a new location northerly to Silver street, mileage 4.34 from Smithville, as shown on the said plan on file with the Board under file No. 24560.37.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Canadian Freight Association for Approval of Proposed Supplement No. 2 to Canadian Freight Classification No. 18.

File No. 33365.85.7

JUDGMENT

BY THE BOARD:

Proposed Supplement No. 2 to Canadian Freight Classification No. 18 was submitted for approval by Chairman Ransom of the Canadian Freight Association, on February 21, 1931. Notice was duly published in the *Canada Gazette* as required under section 322 of the Railway Act and the Board's General Order No. 271. Proof copy of the proposed supplement, together with copy of the notice of publication in the *Canada Gazette*, was mailed by Chairman Ransom to the parties stipulated by General Orders Nos. 271, 348, 353, 469, and 471, with request that their objections, if any, be filed with the Board within thirty days. The supplement contains numerous new items, changes in shipping conditions, reductions, and some advances. Objections were filed to a few items and some of these have been disposed of through further correspondence, and the modifications agreed upon are covered in the order which will issue approving the supplement.

The items in respect to which the parties could not agree are item 4, page 14; item 19, page 14; item 27, page 18; and item 17, page 21. These items consist of a proposed note under the classification provision for Barn and Stable Fittings; Pumps, Hand or Windmill N.O.I.B.N.; Windmills K.D. or Windmill Parts, said note stipulating that pipe or pipe connections used in connection with installation of the articles named, may be included in carload shipments, but not exceeding one-third of the weight of the entire shipment. The carload rating is fifth class on all the articles named, including the pipe and pipe connections, and so far as concerns the barn and stable fittings and the pumps, all the articles are included under the distinctive heading "Hardware," and consequently may be shipped in mixed carloads under the provisions of Classification Rule No. 10. The point in issue concerns only the carload minimum weight on mixed carloads. The carload minimum weight for pipe and pipe connections is 36,000 pounds; on barn and stable fittings, 30,000 pounds; on the pumps and windmills, 26,000 pounds; and under rule 10 of the Classification, on a mixed carload the carload minimum weight is the highest provided for any of the articles in the carload. The object of the proposed notes is to permit the inclusion of a reasonable proportion of pipe and pipe connections in mixed carloads with barn and staple fittings, pumps and windmills, without thereby subjecting such mixed carload to any increase in the carload minimum weights specifically provided for the articles last named; in other words, what is proposed is an exception to rule 10, under which the inclusion of the pipe and pipe connections would increase the carload minimum weight to 36,000 pounds. There are already a few similar exceptions to rule 10 provided for in the Classification, but none of them permit the inclusion of a weight in excess of 25 per cent of the total weight of the shipment; some of them permit only 10 per cent.

Mr. George H. Smith, Department of Railways, Province of Saskatchewan, in a telegram dated March 19, objected to these items "for the reason that applicants for this mixing privilege are not manufacturers of pipe, and it would appear unnecessary, and also unfair to Saskatchewan hardware wholesalers, to permit pipe to be included up to one-third of the total weight of carload shipments of these commodities." This objection was communicated to Chairman Ransom, who wrote the Board on March 21, as follows:—

"As requested in your communication I attach hereto a copy of my reply to Mr. Smith's message referred to. So far as the railways are concerned they are quite agreeable to complying with the request of Mr.

Smith to amend the Supplement, making it quite clear that pipe will not be permitted to be shipped with pumps or stable fittings in order not to discriminate against western jobbers and shippers in the east, who are forwarding pipe to the west in straight carload quantities, or we are prepared to restrict the amount that may be shipped to 10 per cent of the gross weight of the shipment."

Mr. Ransom's letter to Mr. Smith to which reference is made, read:—

"I have your message of the 19th, regarding the inclusion of pipe in carloads of pumps and stable fittings, and I am quite certain that so far as our committee in the east are concerned, you will have our support in the exceptions you have taken. We find that these people have been putting in large quantities of pipe with stable fittings and pumps, describing them as pumps or stable fittings and obtaining the carload minimum weight applicable on the pumps and stable fittings, with the result that some of the jobbers in the west as well as manufacturers in the east have complained. When we attempted to confine the minimum weight on pipe that could be loaded to 10 per cent the Manufacturers' Association in the east objected and it was to avoid complaint to the Board that we established the regulation as proposed.

"So far as the pumps are concerned, we did not feel we should carry any pipe with the pumps as when pumps were classified there was no consideration given or understanding that pipe would be considered as part of the pump. Would your parties interested object to this change if we restricted the quantity to 10 per cent of pipe that could be loaded with stable fittings and pumps?"

Thereafter, on March 26, Mr. Smith telegraphed the Board stating the Saskatchewan shippers were agreeable to a change in wording of the notes restricting the quantity of pipe and pipe connections to 10 per cent of gross weight when loaded in carload shipments of stable fittings and pumps. This information was given to the Canadian Manufacturers' Association, who stated they had advised the shippers interested and one of the latter, Messrs. Beatty Brothers, Limited, Fergus, Ont., would communicate with the Board direct. The firm last named has filed written submission objecting to any change in the items as shown in the proof of supplement submitted to the Board. In addition, Mr. Brown, manager of the Transportation Department, Canadian Manufacturers' Association, advised the Board on April 9 that he had received information from Mr. Carpenter, shippers' representative on the Joint Classification Committee for Manitoba, stating that shippers in Manitoba object to the 10 per cent restriction and desire approval of the items as submitted in the supplement. The Winnipeg Board of Trade, by letter dated April 15, also objected to the notes being amended restricting the weight of the pipe and pipe connections to 10 per cent instead of 33 $\frac{1}{3}$ per cent.

The situation, so far as has been developed, is that a party shipping a straight carload of pipe is required to pay a carload minimum weight of 36,000 pounds; while there appears to have been large quantities of pipe included in mixed cars at minimum weight of 30,000 pounds in the case of stable fittings and 26,000 pounds for the pumps and windmills, the matter being further complicated due to the stable fittings and pumps being included under the distinctive heading "Hardware," which also embraces a great many other articles. It is stated by Chairman Ransom that there have been instances where 12,000 pounds of pipe have been loaded in a car that contained but 500 pounds of stable fittings, the balance required to make up the carload minimum weight of 30,000 pounds consisting of other items in the hardware list. In other cases it has been found that on arrival at destination, the pipe was not used for pumps or stable fittings, being sold at destination, or reshipped from the jobbing point to another destination, and put to an entirely different use.

Item 9, page 154 of the Classification, provides for barn and stable fittings as enumerated, including "Pipe and fittings for same," from which it seems clear it was never intended to permit the inclusion of such quantities of pipe as above instanced at carload minimum weight lower than provided for by rule 10 of the Classification. The item in the Classification covering windmills is vague in its wording so far as relates to the inclusion of pipe. As to pumps, it is not clear that from a strict reading of the Classification, pipe may be included therewith except at minimum weight of 36,000 pounds for the carload.

What is before the Board indicates that all parties agree that it is reasonable to permit the inclusion of a certain quantity of pipe and pipe connections with the articles mentioned for use in connection therewith, without an increase, in the carload minimum weight, but the question is what would be a reasonable restriction to place upon the weight to be included. It may be that there is justification for a difference in the case of stable fittings from that permitted with pumps and windmills. With regard to all this, however, there is nothing in any of the submissions on file that would enable the board to form any intelligent opinion or conclusion in the matter. It will be necessary for the Board to endeavour to develop this information which is necessary to the formation of an intelligent opinion, and enable final disposition of this question, and this will, perhaps, necessitate the matter being set down for hearings at sittings of the Board both in Western and Eastern Canada, so that all interested parties will be afforded an opportunity of being heard. The Board's engagements do not permit of this action being taken immediately. In the meantime, the proposed supplement contains a great many other changes, many of which are reductions in ratings and new items which are in the interest of the shipping public, and the Board is being pressed to issue order approving the supplement. The present classification provisions have been in force for some considerable time and it is felt that there should be no change until the matter has been fully developed as above indicated. The Board, therefore, considers that the items in question should be deleted from this supplement and held in abeyance pending the matters being further developed as already indicated herein.

The supplement as submitted will, therefore, be approved, subject to the following modifications or additions:—

Page No. 4, Rule 3, Section 5.

In the sixth line and in the last line, the following will, in each case, be added after the words "Metal Straps or Rope": "Or with Wire, gauge No. 16 or thicker."

Page 5, Item 2.

Change to read:—

"Disks, Harrow or Plough:

	L.C.L.	C.L.
In bundles	2	
In barrels, boxes or crates	3	
In packages named, C.L. Min. Wt. 24,000 pounds, subject to Rule 7		5"

Page 5, Item 5.

Change to read:—

"Compound:

Welding, N.O.I.B.N.

In fibre or metal cans or cartons in barrels or boxes . .	3
In bulk in barrels or boxes	3"

Page No. 13, Item 6.

Change to read:—

"Tea or Tea Dust:

In wheeled carriers, metal or metal and wood combined, locked and sealed	1	
In metal cans in crates	1	
In barrels or boxes	1	
In packages named, C.L. min. wt. 24,000 pounds		3"

Page No. 14, Items 3 and 4, to be eliminated.

Page No. 14, Items 17, 18 and 19, to be eliminated.

Page No. 18, Items 24, 25, 26 and 27, to be eliminated.

Page No. 21, Items 16 and 17, to be eliminated.

OTTAWA, May 27, 1931.

A. D. CARTWRIGHT,
Secretary.

Application of the Canadian National Railways under Sections 252 and 256 of the Railway Act, for authority to cross certain highways and road allowances with its proposed line between Longue Pointe and Eastern Junction, these crossings being located in the City of Montreal, the Town of St. Leonard de Port Maurice, the Town of Montreal Nord, the Town of St. Michel de Laval and the Town of St. Laurent, all in the Province of Quebec, as shown on plan No. WIF 211-1.1 revised to October 2, 1930, and profile VIF 212-1.1 revised to October 2, 1930.

File No. 9437.319.13

JUDGMENT

ASSISTANT CHIEF COMMISSIONER McLEAN:

At the hearing in the above matter which took place in Montreal on December 15, 1930, the application before the Board was for the approval of the following crossings:—

Sherbrooke street;
La Cordaire street;
Proposed Metropolitan boulevard;
Cote St. Michel road;
Pie IX boulevard;
Montee St. Michel road;

Delorimier avenue;
St. Hubert street;
Stanley Bagg avenue;
Lajeunesse street;
Berri street;
St. Lawrence boulevard; and

to cross the Canadian Pacific Railway at Station 490, between Bremner street and Stewart street, and the Montreal tramways on Stanley Bagg avenue.

Oral judgment was given by Chief Commissioner McKeown (vol. 579, p. 10790) in which it was set out *inter alia*, that the Chief Engineer of the Board was to put himself in touch with the engineers of the Montreal Commission, the engineers of the city, and the engineers of the railway, who might desire to consult with him and discuss the individual crossings concerned, and to get the views of the engineers representing different parties and to endeavour to reconcile their divergent opinions.

Following this a report of the Board's Engineer, dated December 27, 1930, was sent to the Board, and on January 5, 1931, a copy of same went forward to Mr. W. H. Butler, K.C., Assistant City Attorney of Montreal, and to Mr. Alistair Fraser, K.C., Assistant General Counsel of the Canadian National Railways, stating that if they desired to make any comments or submissions in respect of said report, such comments or submissions must be before the Board in writing on or before January 15, 1931.

Under date of February 2, Mr. Butler was written to saying that request for further hearing on various phases of the subject which he had submitted, had been noted, but that the Board had decided that the order in the matter should be no longer withheld. It was stated:—

"Parliament has settled beyond question the location of the line, and the engineering features connected with it have been thoroughly examined by the Board's Engineer, and his recommendations are being followed. These are the questions which are set at rest by the order."

Order No. 46203 of February 2, 1931, issued in the matter.

The city in the discussion which took place leading up to the preparation of the report of the Board's Engineer, asked for twenty-four grade separations, of which eighteen were in the city of Montreal. The railway proposed twelve crossings, nine of which were in the city of Montreal. The Board's Engineer recommended nineteen crossings, being made up of seventeen grade separations and two grade crossings. Fifteen of these crossings are located in the city of Montreal.

The order covered the following matters:—

1. Plan and profile showing the crossings of certain highways and road allowances with the applicant's proposed line between Longue Pointe and Eastern Junction. These are all set out below.

2. The crossings of the Canadian Pacific Railway at Station 490, between Bremner and Stewart streets, and of the Montreal Tramways on Stanley Bagg (Millen) avenue.

3. Grade separations at specified points, viz.:—

- (a) Rockland avenue, lot 266, subway to be constructed when required;
- (b) Racine street, subway to be constructed on this street or on one of the streets between Tollhurst street and Park avenue, as may be agreed upon;
- (c) St. Lawrence boulevard, subway to be constructed;
- (d) St. Denis street, subway at point of proposed diversion to the west to be constructed when required;
- (e) Berri street, subway to be constructed;
- (f) Lajeunesse street, subway to be constructed;
- (g) Stanley Bagg (Millen) avenue, subway for tracks of Montreal Tramways Company;
- (h) St. Hubert street, grade separation;
- (i) Christopher Columbus street, subway to be constructed when required;
- (j) Papineau avenue, subway to be constructed when required;
- (k) Delorimier avenue, subway to be constructed;
- (l) Lille street, subway to be constructed;
- (m) Montee St. Michel (St. Michel road), subway to be constructed;
- (n) St. Vital street, subway to be constructed;
- (o) Pie Neuf boulevard, subway to be constructed;
- (p) Rosemont avenue, overhead bridge to be constructed when required; and
- (q) Sherbrooke street, overhead bridge to be constructed.

4. Authorization to cross and divert certain streets, viz.:—

- (a) Stuart, Birnam, and Allan, and street 351-352. A diversion to Rockland boulevard to be constructed when required.
- (b) Park avenue, Bremner, Verville, Tollhurst, Lumsden, and Bourgeois streets. A diversion to Racine street to be constructed on the south side when required;
- (c) Clarke street. A diversion to St. Lawrence boulevard to be constructed;
- (d) Routhier and Foucher streets. A diversion to Lajeunesse street, on both the north and the south sides, to be constructed;
- (e) Durham street. A diversion to St. Hubert street to be constructed when required;
- (f) St. Sulpice boulevard. Tracks to be constructed along the street, and when the street is opened a diversion to be constructed to the north;
- (g) Hamel and Curotte streets;
- (h) Charton, Hamelin, and St. Firmin avenues. A diversion to be constructed on both the north and south sides to Delorimier avenue when required;

- (i) Merritt avenue and street 163-787. A diversion to be constructed on both the north and the south sides to Delorimier avenue;
- (j) Parthenais street, DeMartigny avenue, and Rancourt street. A diversion to Lille street to be constructed when required;
- (k) Bruchesi and Iberville streets, Sackville, Vianney, Larose, and Emile avenues. A diversion to Lille street and St. Michel road to be constructed on the north side, and between Iberville street and Sackville avenue on the south side, when required;
- (l) unnamed streets between St. Vital street and Pie Neuf boulevard. A diversion to St. Vital street and Pie Neuf boulevard to be constructed on the north side;
- (m) unnamed streets between Pie Neuf boulevard and lot 12, in the town of Montreal North, near mileage 4.4. A diversion from the said lot 12 to Pie Neuf boulevard to be constructed on the north side;
- (n) Cote St. Michel Road. When Metropolitan boulevard is constructed, a diversion from Cote St. Michel road to Metropolitan boulevard to be constructed on both sides of the railway, and the crossing of Cote St. Michel road to be closed;
- (o) unnamed roads 418-723, 418-797, 418-663, and -841 (unopened);
- (p) 31-33, Cadillac, DeCharette, and Bossuet streets (unopened);
- (q) LaCordaire street. An overhead crossing to be constructed when required; and
- (r) Pierre, Bedard, Monsabre, Gerin, Lajoie, and Dickson streets (unopened).

5. The crossing of Cote St. Michel road and La Cordaire streets to be constructed in accordance with the Standard Regulations of the Board Affecting Highway Crossings.

6. Detail plans of the proposed structures to be filed for the approval of an Engineer of the Board.

7. By paragraph (6) of the order it is provided that the city of Montreal, the Montreal Light, Heat and Power Consolidated, the Electrical Commission of the City of Montreal, the Bell Telephone Company of Canada, the Montreal Tramways Commission, and the Montreal Tramways Company be, and they are hereby, directed to move such of the utilities as may be affected by the construction of the said subways, as and when requested to do so by the Chief Engineer, Operating Department of the applicants.

8. The question of cost of construction and maintenance of said works to be reserved for further consideration by the Board.

Application was made by the City of Montreal to His Excellency the Governor General in Council, setting out the exceptions taken by the city.

After hearing, P.C. No. 854 issued, providing—

“Therefore His Excellency the Governor General in Council is pleased to order as follows:—

“1. The above mentioned order of the Board of Railway Commissioners for Canada (46203, dated February 2, 1931) is hereby set aside.

“2. The application of the Canadian National Railways, aforesaid, is hereby referred back to the Board of Railway Commissioners for Canada for the purpose of enabling the city of Montreal to produce evidence and make further submissions with respect to the report submitted to the said Board by its engineers.”

The setting aside of Order No. 46203 of the Board of Railway Commissioners for Canada is understood to be for the purpose of enabling the city of Montreal to produce evidence and make further submissions with respect to the report submitted to said Board by its Engineers.

The matter was set down for hearing in the city of Montreal on April 27, 1931. Mr. George H. Montgomery, K.C., on behalf of the utility companies, was heard in regard to the provisions of Order No. 46203, which stated in substance that the several utilities were directed to move such of their utilities as will be affected by the construction of the said subways, as and when requested so to do by the Chief Engineer, Operating Department of the applicants, and providing further that the question of apportioning the cost of constructing and maintaining said works was to be referred for further consideration by the Board.

At p. 560 of the evidence, vol. 582, Mr. Fraser stated the position of the Canadian National Railways to be as follows:—

“Briefly, the position of the Canadian National is this: We would like an order against the interested utilities directing them to move as set out in the order now under review, set aside by the Governor in Council. It is our opinion that the utilities should not in these circumstances be asked to pay any portion of the cost, and as far as we are concerned we are prepared to have the Board’s order say that the utilities shall move, but not at their cost, that the cost of making the changes shall be part of the cost of the work to which the utilities at the particular points where they move shall not contribute. That is the Bell Telephone Company, the Montreal Light, Heat and Power Company, and the Tramways Company.”

In a later connection, p. 567, he summarized his position as follows:—

“The utilities will not be called upon to pay any portion of the cost of constructing the proposed line from Longue Pointe to Eastern Junction.”

As indicated, the matter was set down for hearing in Montreal on April 27. Hearings were held in Montreal on that date, also on April 28, 29, 30, May 1, 5, 6 and 7. The presentation of evidence by the city of Montreal terminated on the morning of May 5. The matter was spoken to in argument at Ottawa on Friday, May 15, and the morning of Saturday, May 16.

In addition, there is placed before the Board the written submission of Mr. A. S. Pelletier, K.C., dated May 11, 1931, in respect to the position taken by the town of St. Leonard de Port Maurice in regard to Cote St. Michel road. The recommendation contained in the order regarding Cote St. Michel road was that when Metropolitan boulevard was constructed, a diversion from Cote St. Michel road to Metropolitan boulevard should be constructed on both sides of the railway, and the crossing of Cote St. Michel road should be closed. Mr. Pelletier submitted the following:—

“This question of closing Cote St. Michel road and its diversion to the proposed Metropolitan boulevard should be left aside for the time being and be an open question to be debated later if ever the occasion arises.

“For these reasons, the town of St. Leonard de Port Maurice respectfully submits that the order concerning the crossing of Cote St. Michel road should be limited to the requirements of present time, to wit: to authorize the Canadian National railway to cross Cote St. Michel road, the crossing to be constructed in accordance with the regulations of the Board regarding railway crossings.”

On consideration, the amendment asked may be allowed.

After carefully considering the further evidence submitted and arguments addressed to the Board, I am of opinion that, except to relieve the Utilities companies from being called upon to bear and pay any part of the cost of work, and the change in regard to Cote St. Michel road above referred to, Order No. 46203, dated February 2, 1931, should stand.

Order to go accordingly.

Commissioner Stoneman concurred.

Ottawa, June 2, 1931.

ORDER No. 46743

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Sections 252 and 256 of the Railway Act, for authority to cross certain highways and road allowances with their proposed line between Longue Pointe and Eastern Junction, such crossings being located in the City of Montreal, the Town of St. Leonard de Port Maurice, the Town of Montreal Nord, the Town of St. Michel de Laval, and the Town of St. Laurent, all in the Province of Quebec; and to cross the Canadian Pacific Railway at Station 490, between Bremner and Stewart streets, and the Montreal Tramways on Stanley Bagg avenue, —all as shown on plan No. WIF 211-1.1, revised to October 2, 1930, and profile No. VIF 211-1.1, revised to October 2, 1930, on file with the Board under file No. 9437.319.16.

THURSDAY, the 4th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas Order No. 46203, dated February 2, 1931, made in this matter, was set aside by Order in Council P.C. 854, dated April 10, 1931, and referred back to the Board to enable the city of Montreal to produce evidence and make further submissions with respect to the report submitted to the Board by its Engineers;

And whereas, as directed, additional evidence was taken at the sittings of the Board held in Montreal in the presence of counsel for the interested parties, at which sittings and at sittings held in Ottawa further submissions and arguments were made, and due consideration having been given to the said evidence and arguments,—

The Board orders as follows:—

1. That the said plan and profile showing the crossing of certain highways and road allowances with the applicants' proposed line between Longue Pointe and Eastern Junction, such crossings being located in the city of Montreal, the town of St. Leonard de Port Maurice, the town of Montreal North, the town of St. Michel de Laval, and the town of St. Laurent—and the crossing of the Canadian Pacific Railway at Station 490, between Bremner and Stewart streets, and of the Montreal Tramways on Stanley Bagg (Millen) avenue, on file with the Board under file No. 9437.319.16, be, and they are hereby, approved; detail plans of the proposed bridge structure over the Canadian Pacific Railway to be filed for the approval of an Engineer of the Board.

2. That grade separations be constructed at the following points, namely:—

- (a) Rockland avenue, lot 266, subway to be constructed when required;
- (b) Racine street, subway to be constructed on this street, or on one of the streets between Tolhurst street and Park avenue, as may be agreed upon;
- (c) St. Lawrence boulevard, subway to be constructed;
- (d) St. Denis street, subway at point of proposed diversion to the west to be constructed when required;
- (e) Berri street, subway to be constructed;
- (f) Lajeunesse street, subway to be constructed;
- (g) Stanley Bagg (Millen) avenue, subway to tracks of Montreal Tramways Company;
- (h) St. Hubert street, grade separation;
- (i) Christopher Columbus street, subway to be constructed when required;
- (j) Papineau avenue, subway to be constructed when required;
- (k) Delorimier avenue, subway to be constructed;

- (l) Lille street, subway to be constructed;
- (m) Montee St. Michel (St. Michel road), subway to be constructed;
- (n) St. Vital street, subway to be constructed;
- (o) Pie Neuf boulevard, subway to be constructed;
- (p) Rosemont avenue, overhead bridge to be constructed when required; and
- (q) Sherbrooke street, overhead bridge to be constructed.

3. That the applicants be, and they are hereby, authorized to cross and divert the following streets, namely:—

- (a) Stuart, Birman, and Allan and Street 351-352. A diversion to Rockland boulevard to be constructed when required;
- (a) Park avenue, Bremner, Verville, Tolhurst, Lumsden, and Bourgeois streets. A diversion to Racine street to be constructed on the south side when required;
- (c) Clarke street. A diversion to St. Lawrence boulevard to be constructed;
- (d) Routhier and Foucher streets. A diversion to Lajeunesse street, on both the north and the south sides, to be constructed;
- (e) Durham street. A diversion to St. Hubert street to be constructed when required;
- (f) St. Sulpice boulevard. Tracks to be constructed along the street, and when the street is opened a diversion to be constructed to the north;
- (g) Hamel and Curotte streets;
- (h) Charton, Hamelin, and St. Firmin avenues. A diversion to be constructed on both the north and the south sides to Delorimier avenue when required;
- (i) Merritt avenue and street 183-787. A diversion to be constructed on both the north and the south sides to Delorimier avenue;
- (j) Parthenais street, DeMartigny avenue, and Rancourt street. A diversion to Lille street to be constructed when required;
- (k) Bruchesi and Iberville streets, Sackville, Vianney, Larose, and Emile avenues. A diversion to Lille street and St. Michel road to be constructed on the north side, and between Iberville street and Sackville avenue on the south side, when required;
- (l) Unnamed streets between St. Vital street and Pie Neuf boulevard. A diversion to St. Vital street and Pie Neuf boulevard to be constructed on the north side;
- (m) Unnamed streets between Pie Neuf boulevard and Lot 12, in the town of Montreal North, near mileage 4.4. A diversion from the said Lot 12 to Pie Neuf boulevard to be constructed on the north side;
- (n) Cote St. Michel road;
- (o) Unnamed roads 418-723, 418-797, 418-663, and -841 (unopened);
- (p) 31-33, Cadillac, DeCharette, and Bossuet streets (unopened);
- (q) Lacordaire street. An overhead crossing to be constructed when required; and
- (r) Pierre, Bedard, Monsabre, Gerin, Lajoie, and Dickson streets (unopened),

4. That the crossings of Cote St. Michel road and Lacordaire street be constructed in accordance with "The Standard Regulations of the Board Affecting Highway Crossings."

5. That detail plans of the proposed structures be filed for the approval of an Engineer of the Board.

6. That the Montreal Light, Heat and Power Consolidated, the Electrical Commission of the City of Montreal, The Bell Telephone Company of Canada, the Montreal Tramways Commission, and the Montreal Tramways

Company be, and they are hereby, directed to move such of their utilities as may be affected by the construction of the said subways, as and when requested to do so by the Chief Engineer, Operating Department, of the applicant, but at the cost and expense of the applicant, who shall reimburse each of the said parties for the expense so incurred by them forthwith as each of them completes its respective works at each of the said subways.

7. That the moneys disbursed by the applicant pursuant to the next preceding paragraph shall be and be deemed to be part of the cost incurred by the applicant in constructing the works authorized by this order, to be apportioned as hereinafter provided.

8. That the question of the apportionment of the cost of constructing and maintaining the works authorized by this order among the parties interested or affected thereby, other than the Montreal Light, Heat and Power Consolidated, the Electrical Commission of the City of Montreal, The Bell Telephone Company of Canada, the Montreal Tramways Commission, and the Montreal Tramways Company, who shall not be called upon to make any contribution thereto, be, and the same is hereby, reserved for further consideration by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of the Town of Megantic, Que., that the Canadian Pacific Railway Company's viaduct at the intersection of Agnes Street and Spalding Road, in the Town of Megantic, is insufficient to meet the traffic needs at this point.

Heard at Sherbrooke, Que., May 12, 1931.

JUDGMENT

COMMISSIONER NORRIS:

This case arises from a complaint of the town of Megantic, Que., first made in March, 1930, that the then existing viaduct at the intersection of Agnes street and Spalding road was quite insufficient to meet the needs of the traffic at that point. It was alleged by the complainants that this viaduct was not sufficiently high to enable loaded vehicles to clear, when the distance between the road surface and the steel girders above was reduced by snow or ice on the highway.

In June of 1930 the Canadian Pacific Railway Company submitted a plan of this viaduct, and in reply to the complaint of the town of Megantic, alleged that though the present height of the subway was only nine feet from the road surface to the under side of the girders, this subway when originally built in 1904 had an under clearance of 13 feet, but that the town authorities had since filled in the street level to the extent of four feet, thus reducing the clearance to nine feet; it was alleged that the municipality had sacrificed this clearance in order to obtain a level surface for its highway. The railway further submitted that it was quite impossible to raise its tracks to improve this clearance, owing to the proximity of its railway bridge over the Chaudiere river, this bridge being located only 220 feet away from the subway, and the entrance to Megantic railway yard commencing at the end of this bridge.

The railway company submitted as the best means of improving traffic conditions through this subway, that the town of Megantic should acquire the necessary property opposite the subway; widen out the road to reduce the curvature, thus giving more room for the intersection of traffic currents between the two streets, and enabling the town to lower the road surface under the subway, without making particularly sharp pitches in the road surface.

The Board's Engineer after visiting the locus on August 20, 1930, recommended that the town should widen Agnes street to reduce the curvature leading

to the subway and that the railway company should be required to widen the subway opening from 30 to 50 feet, in order to allow of sidewalks, the existing clearance to be preserved under the viaduct.

To the recommendation for the widening of the subway, the railway company took strong exception, their submissions setting forth that this change would necessitate the construction of a new abutment and a complete 50 feet through girder span, and would involve an expenditure of at least \$17,000. They suggested that if a sidewalk were required through the subway, such a structure could be provided at one side, and still leave 26 feet of clear roadway; that the widening of the subway would not materially improve the view of traffic on the main road for cars coming through the subway from Spalding road, or vice versa; or in any event would not improve it to an extent to justify the expense involved in widening the subway to fifty feet. The railway protested strongly at any portion of the expense in connection with the improvement of this subway being apportioned to it.

At the request of the town of Megantic, the case was set down for hearing at Sherbrooke, on Tuesday, May 12, 1931, and was heard before the Assistant Chief Commissioner and Mr. Commissioner Norris. These members of the Board, with the Board's Engineer, and representatives of the railway company, the town of Megantic and the Megantic Board of Trade visited the locus, on the date of the hearing.

At the hearing the town of Megantic asked that pedestrian subways be provided on both sides of the present subway. The town has acquired the property at the corner of Agnes street where the road curves from the west to the south, which will enable it to flatten the curve and locate the line of traffic further away from the entrance to the subway. In support of the application for the two pedestrian subways, the town claimed that the present layout is very dangerous, particularly for the use of school children, and the town objected to the proposal of the railway to construct four foot sidewalks on each side of the subway, claiming that this would narrow the subway for vehicular traffic. The railway company objected to the construction of two pedestrian subways, claiming that this would involve an expenditure of \$6,000, and offered to construct a four foot sidewalk on each side of the present structure.

I am of opinion that the offer of the railway company is fair and reasonable, but as this would leave a roadway only twenty-two feet wide, there is some merit in the protests of the town authorities. It would appear that one sidewalk should be sufficient for the pedestrian traffic through this subway, and that a sidewalk three feet in width, instead of four feet in width should amply answer the needs of this traffic. This would leave a roadway surface of twenty-seven feet in width, and when the approaches to the subway are widened and improved by the flattening of the curves, as is proposed by the town of Megantic, the arrangement outlined should be sufficient to meet the needs of the traffic at this point, both vehicular and pedestrian.

The railway company if relieved of the necessity of providing one of the sidewalks, should in my opinion, bear the cost of providing and installing the necessary guard rail at the edge of the sidewalk, this to be of a material and construction suitable to the town authorities.

I am accordingly of opinion that order should go requiring the railway company to provide and install, at its own expense, a sidewalk on one side of this subway, with the necessary guard-rail to protect same. The sidewalk to be three feet in width, to be placed at a height from the road surface to be decided upon by the town of Megantic, and to be protected by a guard rail, of material and construction suitable to the town authorities.

The matter of enlarging and improving the approaches leading to the subway to be left in the hands of the town of Megantic.

Assistant Chief Commissioner McLean concurred.

OTTAWA, June 6, 1931.

GENERAL ORDER No. 493

In the matter of General Order of the Board No. 483 dated March 5, 1930, prescribing a regulation to be adopted by the railway companies subject to the jurisdiction of the Board in the operation of grade crossings protected by automatic signals or automatic gates, after a train has passed a crossing and makes a back-up movement over the crossing;

And General Order No. 485, dated March 30, 1930, amending the said General Order No. 483, providing that the end of the circuit at such crossings be marked by a small finger-board with the words "end of block" or "end of circuit."

File No. 25434.5

WEDNESDAY, the 27th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading what is filed on behalf of the Railway Association of Canada and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered:

1. That the said General Order No. 485, dated May 30, 1930, be, and it is hereby, rescinded.

2. That the said General Order No. 483, dated March 5, 1930, be, and it is hereby, amended by striking out the last clause therefor and substituting the following, namely:—

"When a train or engine passes over any highway crossing protected by automatic signals or automatic gates, it will be necessary before making a reverse movement over the crossing for a member of the train crew to protect the same."

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46693

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

TUESDAY, the 19th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 130 of Supplement No. 29 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of that published in the said item 130 of Tariff C.R.C. No. 817, approved herein, is 9½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46694

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

TUESDAY, the 19th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 261 of Supplement No. 8 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 261 of Supplement No. 8 to Tariff C.R.C. No. 856, approved herein, is 23 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46695

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

TUESDAY, the 19th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner,*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement	134	to	Tariff	C.R.C.	No.	E- 875.
Supplement	23	to	Tariff	C.R.C.	No.	E-1230.
Supplement	43	to	Tariff	C.R.C.	No.	E-1237.
Supplement	14	to	Tariff	C.R.C.	No.	E-1253.
Supplement	18	to	Tariff	C.R.C.	No.	E-1259.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46687

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 252 and 276 of the Railway Act, for authority to open for the carriage of traffic portion of its branch line of railway through North Battleford, Saskatchewan, mileage 0·00 to 0·54, and to operate through the connection of the said branch with the tracks of the Canadian National Railways at mileage 0·00.

File No. 30356.28

WEDNESDAY, the 20th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavits—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic portion of its branch line of railway through North Battleford, Saskatchewan, mileage 0·00 to 0·54, and to operate through the connection of the said branch with the tracks of the Canadian National Railways at mileage 0·00.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46709

In the matter of the Order of the Board No. 36108, dated February 19, 1925, suspending the Canadian Pacific Railway Company's proposed amendment, subsection "D," Supplement 10, to its Tariff C.R.C. No. W-2755, and the Canadian National Railway Company's proposed amendment, Item 10-A, Supplement No. 2, to its Tariff C.R.C. No. W-401, covering absorption wharfage and other charges at Vancouver and Victoria, in so far as such amendments constitute an advance.

File No. 33564.1

THURSDAY, the 21st day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

The Supreme Court of Canada having decided that the function of the Board under the Railway Act as to tolls and charges is limited to regulating charges for carriage and for those other services which are incidental to carriage, as railway services, within the meaning of the Act, and that the wharfage service in question is not a railway service in the above sense,—

The Board orders: That the said Order No. 36108, dated February 19, 1925, be, and it is hereby, rescinded.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46717

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 252 and 276 of the Railway Act, for authority to open for the carriage of traffic the portion of its Lanigan-Prince Albert Branch from mileage 111.4 to 112, and to operate through the connection of the said branch with the tracks of the Canadian National Railways, at mileage 111.4.

File No. 36655.44

FRIDAY, the 22nd day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the portion of its Lanigan-Prince Albert Branch from mileage 111.4 to 112, and to operate through the connection of the said branch with the tracks of the Canadian National Railways at mileage 111.4.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46720

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic the portion of its Asquith-Cloan Branch, from mileage 29.83 to 43.82.

File No. 30356.29

FRIDAY, the 22nd day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the portion of its Asquith-Cloan Branch, from mileage 29.83 to 43.82.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46724

In the matter of the application of H. G. Toll, Agent, Transcontinental Freight Bureau, Chicago, Illinois, for permission to file on less than statutory notice supplements to transcontinental tariffs increasing international rates on grain, grain products, and seeds.

File No. 27612.53

SATURDAY, the 23rd day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon its appearing that the Order of the Interstate Commerce Commission in Docket 17,000 (Part 7), Rate Structure Investigation, grain and grain products within western district and for export, dated July 1, 1930 (as amended),

requires readjustment of rates on those commodities, effective June 1, 1931, and, conformably therewith, changes in rates are also necessary from points in Canada to points in the United States, from points in the United States to points in Canada, and between points in the United States through Canada,—

The Board orders: That H. G. Toll, Agent of the Transcontinental Freight Bureau, acting under powers of attorney, be, and he is hereby, permitted to file upon the notice and upon the effective date prescribed by the Interstate Commerce Commission, supplements to his Tariffs C.R.C. Nos. 575, 576, 571, 572, 573, 587, and 580, or succeeding issues, increasing rates on grain, grain products, and seeds; and that Orders Nos. 45892, 46323, 46516, 46568, and 46649, dated respectively December 5, 1930, February 23, 1931, April 13, 1931, April 28, 1931, and May 13, 1931, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46730

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 252 and 276 of the Railway Act, for authority (1) to open for the carriage of traffic its Wolfe's Cove Branch from a point on its Quebec Subdivision in lot cadastral No. 2445, Parish of St. Sauveur at mileage 0, to a point in lot cadastral No. 232, Parish of St. Colomb de Sillery, in the County of Quebec, Province of Quebec, at mileage 1.51, and wye track in lots cadastral Nos. 2445, 2344, and 2478, Parish of St. Sauveur; (2) to operate its trains (a) across the tracks of the Electric Railway of the National Transcontinental Railway (Canadian National Railways), (b) the Champlain Market Branch of the National Transcontinentl Railway (Canadian National Railways), (c) in tunnel under the tracks of the Quebec Railway, Light and Power Company's street railway at St. Cyrille street, Quebec, and (d) through the connection of the said branch with the tracks of the Quebec Harbour Commissioners at mileage 1.51; (3) to open for the carriage of traffic its second track from mileage 157.64 to mileage 157.79 Quebec Subdivision; and (4) to operate its trains on the said second track across the Quebec Railway, Light and Power Company's street railway at St. Valier street, in the city of Quebec.

File No. 37372.3

TUESDAY, the 26th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit—

The Board orders: That the applicant company be, and it is hereby, authorized,—

- (1) to open for the carriage of traffic its Wolfe's Cove Branch from a point on its Quebec Subdivision in lot cadastral No. 2445, parish of St. Sauveur, at mileage 0, to a point in lot cadastral No. 232, parish of St. Colomb de Sillery, in the county of Quebec, province of Quebec, at mileage 1.51, and wye track in lots cadastral Nos. 2445, 2344, and 2478, parish of St. Sauveur.

- (2) to operate its trains (a) across the tracks of the Electric Railway of the National Transcontinental Railway (Canadian National Railways), (b) the Champlain Market Branch of the National Transcontinental Railway (Canadian National Railways), (c) in tunnel under the tracks of the Quebec Railway, Light and Power Company's street railway at St. Cyrille street, Quebec, and (d) through the connection of the said branch with the tracks of the Quebec Harbour Commissioners at mileage 1·51;
- (3) to open for the carriage of traffic its second track from mileage 157·64 to mileage 157·79 Quebec Subdivision; and
- (4) to operate its trains on the said second track across the Quebec Railway, Light and Power Company's street railway at St. Valier street, in the city of Quebec,—

the applicant company to operate its trains over the said diamond crossings without bringing them to a stop, provided the signals are in the clear position.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46752

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under the provisions of General Order No. 119, for leave to remove their agent at Lyalta Station, in the Province of Alberta.

File No. 4205.506.

TUESDAY, the 26th day of May, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed in support of the application, the Municipal District of Keoma No. 249 offering no objection, although duly notified; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is Ordered: That the applicants be, and they are hereby, granted leave, until further Order, to remove their agent at Lyalta Station, Alberta, subject to and upon the condition that a caretaker be appointed to see that the station building is kept clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to take care of l.c.l. freight and express shipments.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46749

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2.

TUESDAY, the 2nd day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in the following schedules filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3, namely:—

Supplement No. 14 to Tariff C.R.C. No. E-1233.

Supplement No. 27 to Tariff C.R.C. No. E-1234.

Supplement No. 44 to Tariff C.R.C. No. E-1235.

Supplement No. 8 to Tariff C.R.C. No. E-1504.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46751

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15.

TUESDAY, the 2nd day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published on Slack coal from Minto to Fredericton, New Brunswick, in Supplement No. 10 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 10 to Tariff C.R.C. No. 160, approved herein, is \$1.20 per net ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46750

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 2nd day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 88 of Supplement No. 21 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 15½ cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 88 of Supplement No. 21 to Tariff C.R.C. No. 812, approved herein, is 19·4 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46762

In the matter of the application of the Canadian Electrical Association for an extension of the delay for applying for and for leave to appeal to the Supreme Court of Canada from General Order of the Board No. 490, dated February 20, 1931, amending the Rules for Wires Erected Along or Across Railways, adopted by General Order No. 231, dated May 6, 1918, as amended by General Order No. 291, dated April 7, 1920.

Case No. 4704

FRIDAY, the 5th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, May 19, 1931, in the presence of counsel for the applicant, the Hydro-Electric Power Commission of Ontario, the Toronto Hydro-Electric System, and the Railway Association of Canada, and what was alleged, all parties interested having been served with notice stating the grounds of appeal—

The Board orders:

1. That the time for applying for leave to appeal to the Supreme Court of Canada from the said General Order No. 490, dated February 20, 1931, be, and it is hereby, extended to the date of this order.

2. That leave be, and it is hereby, granted the appellants to appeal to the Supreme Court of Canada upon the following question, which, in the opinion of the Board, is a question of law or a question of jurisdiction, or both, namely:—

“As a matter of law, had the Board jurisdiction to make General Order No. 490, dated the 20th of February, 1931?”

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF
MARCH, 1931

Railway accidents 158, involving 17 persons killed and 162 injured.
Railway accidents at highway crossings.... 15, involving 11 persons killed and 16 injured.

	Killed.	Injured.
Passengers..	3	30
Employees..	3	111
Others..	22	37
Total..	<u>28</u>	<u>178</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

PROVINCE OF QUEBEC

2 Horse-drawn vehicles.

PROVINCE OF ONTARIO

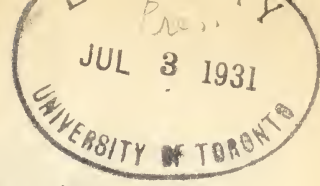
- 5 Automobile—Ran into side of train. Ontario licences U-2269, OB-679, 35869-C,
LV-2; Mass. 443270.
1 Automobile—Excessive speed of auto truck. Ontario licence 45659-C.
5 Automobile—Ontario licence JW-448, DX-578, C-36355, 51803-C, 45029-C.
1 Pedestrian.

PROVINCE OF BRITISH COLUMBIA

1 Automobile—B.C. licence 54225.

Of the fifteen accidents at highway crossings, two occurred at protected crossings and thirteen at unprotected crossings. Ten of the accidents occurred during the daylight hours and five at night.

OTTAWA, June 2, 1931.



The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, July 1, 1931

No. 8

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Application of the Canadian National Railways for authority to construct its proposed cut-off near Brantford, Ontario, across Park Road at grade level, Lots 36 and 37, Concession 3, Township of Brantford, County of Brant.
File 37618.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The evidence given by witnesses for the township goes to show that the traffic on Park road is not heavy, and the view of approaching trains would be good. The opposition to the grade crossing appears to be based mainly on the fact that the present main line is only about 900 feet away. It is contended this would complicate the matter. Mr. Kilburn, the Board's Engineer, reports that the traffic on Park road is light, and the view of trains will be good. He is also of opinion that the traffic will go by way of West street, where there are grade separations, instead of by way of Park road.

If it is assumed that a subway at Park road will cost the same as West street, this cost will be at least \$51,000 for a subway, and in addition \$30,000 for drainage. There is no assurance that the drainage in question would be satisfactory.

Considering the various factors concerned, it seems justifiable to grant the application as launched.

S. J. McLEAN.

OTTAWA, June 22, 1931.

Commissioner Stoneman concurred.

Application of the Confederated Freight Association, Toronto, Ontario, for ruling by the Board as to the legal rate on a carload shipment of cast-iron pipe from Three Rivers, Que., to Glace Bay, N.S., shipped May 14, 1928, over the lines of the Canadian Pacific, Canadian National, and Sydney and Louisburg Railways.

RULING

BY THE BOARD:

This matter has been presented to the Board by written submission filed by the applicant dated June 15, 1931, and applies for a ruling by the Board as to the rate legally published and in effect on a carload shipment of cast-iron

pipe from Three Rivers, Que., to Glace Bay, N.S., shipped May 14, 1928, over the lines of the Canadian Pacific, Canadian National, and Sydney and Louisburg Railways.

At the time this shipment moved the tariff situation was as follows: Cast-iron pipe, in carloads, was provided with rating of fifth class in the Canadian Freight Classification. By item 237-A, Supplement No. 151 to Canadian Pacific Railway Tariff C.R.C. No. E-3832, provision was made for application of seventh class rates on cast-iron pipe, in carloads, between all stations in Canada, Westfort, Sault Ste. Marie, Windsor, Ont., and east thereof, where through class rates were in effect. The seventh class rate published from Three Rivers to Sydney, N.S., in Canadian Pacific Railway Tariff C.R.C. No. E-3224 was 40 cents per 100 pounds. No through class rates were, or are now, in effect from points on the Canadian Pacific or Canadian National Railways to stations on the Sydney and Louisburg Railway, on which Glace Bay is located. Through shipments are, therefore, charged the combination of the rate published to Sydney plus the rate published in tariffs of the Sydney and Louisburg Railway from Sydney to destination. The Sydney and Louisburg Railway had no tariff provision making an exception from the classification rating of fifth class on cast-iron pipe, and in its Tariff C.R.C. No. 22 applying on traffic from points in Canada not on the eastern lines, i.e., points west of Lévis, Que., and Diamond Junction, Que., the fifth class rate from Sydney to Glace Bay is 12 cents per 100 pounds.

RULING

The ruling of the Board is that under the companies tariffs on file with the Board, the published legal rate on this carload shipment of cast-iron pipe from Three Rivers, Que., to Glace Bay, N.S., was 52 cents per 100 pounds, made up as above set out.

(Sgd.) A. D. CARTWRIGHT,
Secretary.

OTTAWA, June 23, 1931.

ORDER No. 46761

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 5th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Group "D" stations to Copper Cliff, Ont., Algoma Eastern Railway, in Supplement No. 15 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 15 to Tariff C.R.C. No. E-4322 approved herein, is 31 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46768

In the matter of the application of the Canadian Pacific Railway Company, as lessee exercising the franchises of the Lacombe and Northwestern Railway, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of the Applicant Company's line from mileage 92·13 at Thorsby to mileage 112·5 at Leduc, in the Province of Alberta.

File No. 36947.12

FRIDAY, the 5th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its line from mileage 92·13 at Thorsby to mileage 112·5 at Leduc, in the province of Alberta.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46770

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Hamlin-Glenbush Branch from the junction with the Turtleford Subdivision of the Canadian Northern Railway Company at mileage 10·89 to a connection with the Robinhood Subdivision of the Canadian National Railway Company at mileage 50·27, near Glenbush, Saskatchewan, a distance of 31·53 miles; also the right to operate over the east leg of the wye at Glenbush, 0·27 mile in length.

File No. 11929.82

FRIDAY, the 5th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Hamlin-Glenbush Branch from the junction with the Turtleford Subdivision of the Canadian Northern Railway Company at mileage 10·89 to a connection with the Robinhood Subdivision of the applicant company at mileage 50·27, near Glenbush, Saskatchewan, a distance of 31·53 miles; also the east leg of the wye at Glenbush, 0·27 mile in length.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46804

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

MONDAY, the 8th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. E-4485, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 2 to Tariff C.R.C. No. E-4485, approved herein, are as follows:—

Index No.	To	Rates in cents per 100 pounds		
		Group	From 2	3
22375	Rouyn, Que.	(2)	71½	59
22380	Noranda, Que.	(1)	65	71½

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 46805

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

MONDAY, the 8th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. E-4485, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. E-4485, approved herein, are as follows:—

CANADIAN PACIFIC RAILWAY

Index No.	To	Rates in cents per 100 pounds		
		Group.. 1	From 2	3
952	Wark, Ont.	38	38	38
952a	Smithfield, Ont.			

CANADIAN NATIONAL RAILWAYS

Index No.	To	Rates in cents per 100 pounds		
		Group.. 1	From 2	3
9102	Becquets, P.Q.	(2) $41\frac{1}{2}$ (1) $32\frac{1}{2}$	29	$41\frac{1}{2}$
9104	St. Sophie de Levrard, P.Q.	(2) $41\frac{1}{2}$	30	$41\frac{1}{2}$
9106	Levrard, P.Q.	(1) $32\frac{1}{2}$		
9108	Gentilly East, P.Q.	(2) 40	30	40
9116	to Becancour, P.Q.	(1) $32\frac{1}{2}$		
9118	Lake St. Paul, P.Q.	(2) 40	$32\frac{1}{2}$	40
9136	to Yamaska, P.Q.	(1) $32\frac{1}{2}$		
9142	Sorel, P.Q.	(2) $41\frac{1}{2}$	$32\frac{1}{2}$	$41\frac{1}{2}$
9144	to St. Roch, P.Q.	(1) $32\frac{1}{2}$		
9146	Contrecoeur, P.Q.	(2) 40	$32\frac{1}{2}$	40
9156	to Boucherville, P.Q.	(1) $32\frac{1}{2}$		
9164	St. Robert, P.Q.	(2) $41\frac{1}{2}$ (1) $32\frac{1}{2}$	$32\frac{1}{2}$	$41\frac{1}{2}$
9166	St. Aime, P.Q.	(2) 40	$32\frac{1}{2}$	40
9186	to Mont St. Gregoire, P.Q.	(1) $32\frac{1}{2}$		

NIPISSING CENTRAL RAILWAY

22305	Kirkland Lake, Ont.	$67\frac{3}{4}$	$67\frac{3}{4}$	$67\frac{3}{4}$
22310	King Kirkland, Ont.			
22315	Crystal Lake, Ont.	$68\frac{1}{4}$	$68\frac{1}{4}$	$68\frac{1}{4}$
22320	Gordon's Pit, Ont.			
22325	Dobie, Ont.	69	69	69
22330	Larder Lake, Ont.	$69\frac{1}{4}$	$69\frac{1}{4}$	$69\frac{1}{4}$
22340	to Dalby, Ont.			
22345	Cheminis, Ont.	70	70	70
22330	Dasserat, Ont.			
22355	Kanasuta, Ont.	$70\frac{3}{4}$	$70\frac{3}{4}$	$70\frac{3}{4}$
22365	to Aldermac, Ont.			
22370	Boischatel, Ont.	$71\frac{1}{4}$	$71\frac{1}{4}$	$71\frac{1}{4}$
22375	Rouyn, Que.	$71\frac{1}{4}$	65	$71\frac{1}{4}$
22380	Noranda, Que.	(1) 65		

TEMISKAMING AND NORTHERN ONTARIO RAILWAY

Index No.	To	Rates in cents per 100 pounds		
		Group..	1	From 2 3
24615	Trout Mills, Ont.		48½	48½
24630	Widdifield, Ont.		50	50
24635	Mulock, Ont.		51	51
24640	White Rock, Ont.		51½	51½
24645	Tomiko, Ont.		51½	51½
24650	Jocko, Ont.		53	53
24665	to Diver, Ont.		53	53
24670	Otter, Ont.		54½	54½
24680	to Kenney, Ont.		54½	54½
24685	Redwater, Ont.		55½	55½
24690	Doherty, Ont.		56½	56½
24695	Temagami, Ont.		57½	57½
24705	to Owaisa, Ont.		57½	57½
24710	Rib Lake, Ont.		58½	58½
24715	Johnston, Ont.		58½	58½
24720	Latchford, Ont.		59	59
24735	to Cassidy, Ont.		59	59
24740	Kerr Lake Junction, Ont.		59½	59½
24765	to Uno Park, Ont.		59½	59½
24770	Maybrook, Ont.		61½	61½
24795	to Englehart Junction, Ont.		61½	61½
24800	Kadmon, Ont.		63	63
24835	to Dane, Ont.		63	63
24840	Swastika, Ont.		64½	64½
24850	to Sesekinika, Ont.		64½	64½
24855	Bourkes, Ont.		65	65
24870	to Vimy Ridge, Ont.		65	65
24875	Belleck, Ont.		66	66
24905	to Monteith, Ont.		66	66
24910	Kelso, Ont.		68½	68½
24935	to Holland, Ont.		68½	68½
24950	Duck, Ont.		63	63
24955	Charlton, Ont.		63	63
24960	Larocque, Ont.		71	71
24965	Grenier, Ont.		72	72
24995	to Wurtele, Ont.		72	72
25030	McCool, Ont.		61½	61½
25040	to Kenebec, Ont.		61½	61½

TEMISKAMING AND NORTHERN ONTARIO RAILWAY—*Concluded*

Index No.	To	Rates in cents per 100 pounds		
		Group.. 1	From 2	3
25045	Osseo, Ont.	63	63	63
25070	to Elk Lake, Ont.			
25080	Onagon, Ont.	68½	68½	68½
25120	to Drinkwater, Ont.			
25165	Fountain Falls, Ont.	59½	59½	59½
25168	Upper Notch, Ont.			
25170	Silver Centre, Ont.	61½	61½	61½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46806

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

MONDAY, the 8th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. E-4485, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. E-4485, approved herein, are as follows:—

CANADIAN PACIFIC RAILWAY

Index No.	To	Rates in cents per 100 pounds		
		Group 1	From 2	3
95	Megantic, P.Q.	30	30	30
332	to Sherbrooke, P.Q.			
334	Rock Forest, P.Q.	32½	32½	32½
382	to Sutton, P.Q.			
383	Westover, P.Q.	32	32	32
407	to Kingsbury, P.Q.			
409	Windsor Mills, P.Q.	30	30	30
413	Ruiters Mills, P.Q.	32	32	32
441	to Stanbridge, P.Q.			

CANADIAN PACIFIC RAILWAY—Continued

Index No.	To	Rates in cents per 100 pounds		
		Group	From 1	2 3
444	Canrobert, P.Q. }			
458	to St. Guillaume, P.Q. }		32½	32½ 32½
459a	Slab City, P.Q. }			
459J	to Malvina, P.Q. }		30	30 30
460	Montreal (Place Viger), P.Q. . . . }			
480	to Atwater, P.Q. }		32½	32½ 32½
492	Bordeaux, P.Q. }			
574	to Grondines, P.Q. }		35½	35½ 35½
576	Lachevrotiere, P.Q.		35½	29 35½
578	Deschambault, P.Q. }		35½	26½ 35½
579	Portneuf, P.Q. }			
582	St. Basile, P.Q. }			
587	to Lorette, P.Q. }		35½	35½ 35½
590	Quebec, P.Q.		32	<div> <div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> </div> <div> <div>27½</div> <div>29</div> <div>30</div> <div>30</div> </div> </div> 30
610	Voligny, P.Q.		35½	35½ 35½
611	Joliette, P.Q.		35½	34 35½
612	Ste. Emilie, P.Q. }			
625	to Labissonniere, P.Q. }		35½	35½ 35½
626	Shawinigan Falls, P.Q. }			
627	to Grand Mere, P.Q. }		35½	31½ 35½
629	Cap de la Madeleine, P.Q. . . . }			
638	to Lac a la Tortue, P.Q. }		35½	35½ 35½
640	Garneau, P.Q.		35½	30 35½
642	Proulx, P.Q. }			
714	to Loranger, P.Q. }		35½	35½ 35½
716	Lac Saguay, P.Q. }			
720	to Barrette, P.Q. }		37½	37½ 37½
721	Brunet, P.Q. }			
722	Mont Laurier, P.Q. }		40½	40½ 40½
725	Chicot, P.Q. }			
820	to Haley's, Ont. }		35½	35½ 35½
821	Cobden, Ont. }			
825	to Pembroke, Ont. }		37½	37½ 37½
826	Stafford, Ont. }			
830	to Chalk River, Ont. }		39	39 39

CANADIAN PACIFIC RAILWAY—Continued

Index No.	To	Rates in cents per 100 pounds		
		Group	From 1	2 3
834	Franktown, Ont.	}	35½	35½
852	to Eganville, Ont.			
854	Deschene, P.Q.	}	37½	37½
855	to Aylmer, P.Q.			
856	Breckenridge, P.Q.	}	39	39
860	to Quyon, P.Q.			
861	Wyman, P.Q.	}	40½	40½
867	to Vinton, P.Q.			
868	Fort Coulonge, P.Q.	}	43	43
871	to Waltham, P.Q.			
875	Ironside, P.Q.	}	37½	37½
877	to Kirk's Ferry, P.Q.			
878	Cascades, P.Q.	}	39	39
883	to Brennan, P.Q.			
884	Low, P.Q.	}	40½	40½
890	to Gracefield, P.Q.			
891	Blue Sea, P.Q.	}	43	43
894	to Maniwaki, P.Q.			
895	Glen Tay, Ont.	}	35½	35½
898	to Sharbot Lake, Ont.			
899	Olden, Ont.	}	37½	37½
908	to Tiffin (Hastings County), Ont. . .			
909	Blairton, Ont.	}	39	39
912	to Indian River, Ont.			
913	Peterboro, Ont.	}	40½	40½
916	to Dranoel, Ont.			
917	Manners, Ont.	}	41½	41½
933a	to North Toronto, Ont.			
934	Elmsley, Ont.	}	35½	35½
941	to Parham, Ont.			
942	Wilkinson, Ont.	}	37½	37½
951	to Trenton, Ont.			
952	Wark, Ont.	}	40	40
952a	Smithfield, Ont.			
953	Brighton, Ont.	}	39	39
955	to Grafton, Ont.			

CANADIAN PACIFIC RAILWAY—*Continued*

Index No.	To	Rates in cents per 100 pounds		
		Group	From 2	3
955a	Spicer, Ont.	40½	40½	40½
962	to Bowmanville, Ont.			
963	Darlington, Ont.	41½	41½	41½
968	to Cherrywood, Ont.			
972	Kingston, Ont.	37½	37½	37½
974	to Murvale, Ont.			
975	Harrowsmith, Ont.	35½	35½	35½
992	to Clyde Forks, Ont.			
993	Flower, Ont.	37½	37½	37½
997	to Ashdod, Ont.			
998	Opeongo, Ont.	35½	35½	35½
999	Renfrew Jct., Ont.			
1002	Bethany, Ont.	40½	40½	40½
1003	Fleetwood, Ont.			
1004	Hillhead, Ont.	41½	41½	41½
1012	to Eldon, Ont.			
1013	Talbot, Ont.	43	43	43
1019	to Coldwater, Ont.			
1020	Fesserton, Ont.	45½	45½	45½
1024	to Midland, Ont.			
1026	Nestleton, Ont.	41½	41½	41½
1031	to Ops, Ont.			
1035	Dunsford, Ont.	43	43	43
1083	to Guelph Junction, Ont.			
1084	McRae, Ont.	45½	45½	45½
1092	to Ayr, Ont.			
1093	Wolverton, Ont.	47	47	47
1099	to Zorra, Ont.			
1100	Thamesford, Ont.	47½	47½	47½
1103	to London, Ont.			
1110	Lobo, Ont.	48½	48½	48½
1115	to Glencoe, Ont.			
1117	Newbury, Ont.	48	48	48
1123	to Chatham, Ont.			
1124	Ringold, Ont.	50	50	50
1135	to Windsor, Ont.			

CANADIAN PACIFIC RAILWAY—*Continued*

Index No.	To	Group	Rates in cents per 100 pounds		
			1	From 2	3
1171	Wheaton, Ont.	}	43	43	43
1180	to Beeton, Ont.				
1182	Allison, Ont.	}	45½	45½	45½
1186	to Mac, Ont.				
1187	Midhurst, Ont.	}	43	43	43
1236	to Orangeville, Ont.				
1237	Fraxa, Ont.	}	45½	45½	45½
1241	to Shelburne, Ont.				
1242	Melancthon, Ont.	}	47	47	47
1244	to Dundalk, Ont.				
1245	Proton, Ont.	}	48	48	48
1248	to Markdale, Ont.				
1249	Berkeley, Ont.	}	50	50	50
1254	to Owen Sound, Ont.				
1260	Amaranth, Ont.	}	45½	45½	45½
1262	to Grand Valley, Ont.				
1263	Arthur, Ont.	}	47	47	47
1266	to Harriston, Ont.				
1267	Fordwich, Ont.	}	48	48	48
1269	to Wroxeter, Ont.				
1271	Glenannon, Ont.	}	49	49	49
1284	to Walkerton, Ont.				
1286	Mount Forest, Ont.	}	47	47	47
1290	Wingham, Ont.				
1293	Meadowville, Ont.	}	43	43	43
1314	to Guelph, Ont.				
1315	Ariss, Ont.	}	45½	45½	45½
1317	to Elmira, Ont.				
1318	Wallenstein, Ont.	}	47	47	47
1321	to Milverton, Ont.				
1322	West Monkton, Ont.	}	48	48	48
1325	to Walton, Ont.				
1326	Blyth, Ont.	}	49	49	49
1330	to Goderich, Ont.				
1333	Beachville, Ont.	}	47	47	47
1334	to Ingersoll, Ont.				

CANADIAN PACIFIC RAILWAY—*Continued*

Index No.	To	Rates in cents per 100 pounds		
		Group	From 2	3
1335	Putnam, Ont.	48½	48½	48½
1340	to St. Thomas, Ont.			
1343	Ingersoll North, Ont.	47	47	47
1350	to St. Mary's, Ont.			
1355	Erin, Ont.	45½	45½	45½
1360	to Elora, Ont.			
1364	Dorkin, Ont.	47	47	47
1374	to Tilsonburg, Ont.			
1376	Eden, Ont.	48	48	48
1380	to Port Burwell, Ont.			
1390	Wylie, Ont.	39	39	39
1391	Bass Lake, Ont.			
1392	Moor Lake, Ont.	40½	40½	40½
1396	to Adelard, Ont.			
1399	Aylen, Ont.	41½	41½	41½
1404	to Mattawa, Ont.			
1406	Olrig, Ont.	43	43	43
1417	to Beauceage, Ont.			
1420	Sturgeon Falls, Ont.	45½	45½	45½
1424	to Warren, Ont.			
1426	Markkstay, Ont.	47	47	47
1431	to Romford, Ont.			
1432	Sudbury, Ont.	48	48	48
1433	Murray, Ont.			
1434	Azilda, Ont.	56	56	56
1435	Chelmsford, Ont.			
1437	Levack, Ont.	59½	59½	59½
1440	to Geneva, Ont.			
1442	Stralak, Ont.	63	63	63
1453	Ramsay, Ont.			
1464	Chapleau, Ont.	66½	66½	66½
1466	Pardee, Ont.			
1471	Goldie, Ont.	69½	69½	69½
1472	Bolkow, Ont.			
1477	Missanabie, Ont.	71	71	71

CANADIAN PACIFIC RAILWAY—*Concluded*

Index No.	To	Rates in cents per 100 pounds		
		Group	From 2	3
1482	Hobon, Ont.	74	74	74
1490	to Amyot, Ont.			
1543	Ceramic, P.Q.	46	46	46
1544	to Snake Creek, P.Q.			
1545	Crest, P.Q.	47	47	47
1546	to Beauchene, P.Q.			
1548	Temiskaming, P.Q.	48	48	48
1550	to Lumsden's Mills, P.Q.			
1551f	Fabre, P.Q.	54	54	54
1551m	to Laverlochere, P.Q.			
1551n	Angliers, P.Q.	55½	55½	55½
1551s	Kipawa, P.Q.	48	48	48
1551v	Ville Marie (Temiskaming Co.), P.Q.	54	54	54
1551y	Bradley, Ont.	58	58	58
1553	Barnesdale, Ont.	43	43	43
1558	to Parry Sound, Ont.			
1559	Nobel, Ont.	47	47	47
1561	to Shawanaga, Ont.			
1562	Point au Baril, Ont.	48	48	48
1587	to Nairn, Ont.			
1589	Espanola, Ont.	49	49	49
1594	to Spanish, Ont.			
1595	Cutler, Ont.	50	50	50
1605	to Dean Lake, Ont.			
1607	Dayton, Ont.	52½	52½	52½
1615	to Desbarats, Ont.			
1616	Isbester, Ont.	54	54	54
1621	to Sault Ste. Marie, Ont.			

ALGOMA CENTRAL AND HUDSON BAY RAILWAY

3000	Sault St. Marie, Ont.	54	54	54
3005	Odena, Ont.	61	61	61
3010	Granite, Ont.			
3015	Heydon, Ont.	63	63	63
3020	Island Lake, Ont.	65	65	65
3025	Bellevue, Ont.			

ALGOMA CENTRAL AND HUDSON BAY RAILWAY—*Concluded*

Index No.	To	Group	Rates in cents per 100 pounds		
			From		
			1	2	3
3030	Northland, Ont.	}	68	68	68
3035	Glendale, Ont.				
3040	Searchmont, Ont.		69	69	69
3045	Wabas, Ont.		70½	70½	70½
3050	Copper, Ont.	}	72	72	72
3055	Achigan, Ont.				
3060	Bucyrus, Ont.	}	73	73	73
to 3070	Marion, Ont.				
3075	Muskode, Ont.	}	76	76	76
to 3083	Alva, Ont.				
3090	Mekatina, Ont.		77½	77½	77½
3095	Pangis, Ont.		78	78	78

ALGOMA EASTERN RAILWAY

3405	Copper Cliff, Ont.	}	48	48	48
to 3460	Nairn, Ont.				
3465	Espanola, Ont.		49	49	49
3470	Anderson Lake, Ont.	}	58	58	58
to 3490	Whitefish Lake, Ont.				
3495	Birch Island, Ont.	}	61½	61½	61½
3500	McGregor Bay, Ont.				
3505	Turner, Ont.	}	62	62	62
3510	Little Current, Ont.				
3515	Espanola Junction, Ont.		49	49	49

CANADIAN NATIONAL RAILWAYS

9100	Fortierville, P.Q.		32½	29	37½
9102	Becquets, P.Q.	(2)	41½	29	41½
		(1)	37½		
9104	Ste. Sophie de Levrard, P.Q.	(2)	41½	30	41½
9106	Levrard, P.Q.	(1)	37½		
9108	Gentilly East, P.Q.	(2)	40	30	40
		(1)	37½		
9110	Gentilly, P.Q.	(2)	40	30	40
to 9116	Becancour, P.Q.	(1)	38		
9118	Lake St. Paul, P.Q.		38	32½	38
9120	St. Gregoire, P.Q.	(2)	37½	32½	37½
9122	Nicolet, P.Q.	(1)	32½		

CANADIAN NATIONAL RAILWAYS—*Concluded*

Index No.	To	Rates in cents per 100 pounds			
		Group	1	From 2	3
9124	Moulin Rouge, P.Q.	(2)	40	32½	40
9130	to St. Francois du Lac, P.Q.	(1)	39		
9132	Girard Siding, P.Q.				
9136	to Yamaska, P.Q.		40	32½	40
9142	Sorel, P.Q.	(2)	41½	34	41½
9144	to St. Roch, P.Q.	(1)	39½		
9146	Contrecoeur, P.Q.				
9156	to Boucherville, P.Q.		40	..	40
9158	Longueuil, P.Q. (Private Sidings)	(3)	32½	(5) 32½	(6) 40
		(4)	40		
	(Team Tracks)	(3)	32½	(5) 32½	(6) 40
		(4)	40		
9160	St. Lambert, P.Q.	(3)	32½		
		(4)	37½	(5) 32½	(6) 37½
9164	St. Robert, P.Q.	(2)	41½		
		(1)	39½	32½	41½
9166	St. Anne, P.Q.				
9172	to St. Barnabe South, P.Q.		40	..	40
9174	St. Hyacinthe, P.Q.		32½	32½	32½
9176	St. Damase, P.Q.	(2)	40	..	40
9178	Caroline, P.Q.	(1)	34		
9180	Rougemont, P.Q.	(2)	40	32½	40
		(1)	32½		
9182	Cote Double, P.Q.	(2)	40	..	40
		(1)	34		
9184	Ste. Angele, P.Q.	(2)	40	32½	40
		(1)	32½		
9186	Mont St. Gregoire, P.Q.	(2)	40	32½	40
		(1)	34		
9190	Sabrevois, P.Q.	(2)	41½	34	41½
		(1)	34		
9192	Henryville, P.Q.				
9196	Clarenceville, P.Q.	(1)	34	34	
9198	Noyan, P.Q.	(2)	35½	34	35½
		(1)	34		
9280	Angeline, P.Q.	(2)	37½	32½	37½
9285	Granby, P.Q.	(1)	32½		
9300	Durocher, P.Q.				
9320	to Frelighsburg, P.Q.		37½	37½	37½

TORONTO, HAMILTON AND BUFFALO RAILWAY

13655	Port Dalhousie, Ont.			
13730	to Merritton, Ont.	43	43	43

CENTRAL VERMONT RAILWAY

Index No.	To	Rates in cents per 100 pounds			
		Group	1	From 2	3
18000	St. Armand, P.Q.	(2)	37½	32½	37½
18015	to St. Alexander, P.Q.		34		

ESSEX TERMINAL RAILWAY

20100	East Windsor, Ont.	}	50	50	50
20140	to Quarries, Ont.				

GRAND RIVER RAILWAY

20305	Preston, Ont.	}	45½	45½	45½
20340	to Hespeler, Ont.				

HAMILTON, GRIMSBY AND BEAMSVILLE RAILWAY

20420	Stoney Creek, Ont.	}	43	43	43
20465	to Beamsville, Ont.				

HULL ELECTRIC RAILWAY

20550	Deschene, P.Q.	}	37½	37½	37½
20565	Aylmer, P.Q.				

LAKE ERIE AND NORTHERN RAILWAY

20805	Glenmorris, Ont.	}	45½	45½	45½
20820	to Brantford, Ont.				
20825	Mount Pleasant, Ont.	}	47	47	47
20855	to Simcoe, Ont.				
20860	Port Dover, Ont.		46	46	46

LONDON AND PORT STANLEY RAILWAY

20900	London, Ont.		47½	47½	47½
20905	Westminster, Ont.	}	48½	48½	48½
20925	to Port Stanley, Ont.				

MICHIGAN CENTRAL RAILROAD

Index No.	To	Rates in cents per 100 pounds		
		Group	From 2	3
21100	Windsor, Ont.	50	50	50
21180	to Rodney, Ont.			
21185	West Lorne, Ont.	49	49	49
21200	to Sheddon, Ont.			
21205	St. Thomas, Ont.	48½	48½	48½
21210	London, Ont.	47½	47½	47½
21215	Kingsville, Ont.	48½	48½	48½
21230	to Brownsville, Ont.			
21235	Tillsonburg, Ont.	47	47	47
21270	to Townsend, Ont.			
21275	Hagersville, Ont.	45½	45½	45½
21285	Lythmore, Ont.	47	47	47
21310	to Perry, Ont.			
21325	Victoria Park, Ont.	43	43	43
21330	Niagara Falls, Ont.			
21340	Edgars, Ont.	50	50	50
21375	to Sea Cliff Park, Ont.			
21385	Southwold, Ont.	49	49	49
21405	to Alvinston, Ont.			
21410	Inwood, Ont.	50	50	50
21475	to Petrolea, Ont.			
21485	Brookfield, Ont.	43	43	43
21555	to Niagara-on-the-Lake, Ont.			

NAPIERVILLE JUNCTION RAILWAY

21700	Lacolle, P.Q.	(2) 38	34	38
		(1) 34		
21705	Napierville, P.Q.	38	38	38
21720	to St. Mathieu, P.Q.			

NEW YORK CENTRAL RAILROAD

22000	Athelstan, P.Q.	38½	38½	38½
22005	Huntingdon, P.Q.	35½	33½	33½
22010	New Erin, P.Q.	38½	38½	38½
22015	St. Stanislaus, P.Q.			
22020	Valleyfield, P.Q.	34½	34½	34½
22025	Cecile Junction, P.Q.			

NEW YORK CENTRAL RAILROAD—*Concluded*

Index No.	To	Group	Rates in cents per 100 pounds		
			From		
			1	2	3
22030	St. Timothee, P.Q.		38½	38½	38½
22035	Beauharnois, P.Q.		34½	34½	34½
22040	Bellevue, P.Q.	}	38½	38½	38½
22050	to Chateauguay, P.Q.				
22135	to Cornwall, Ont.				
22205	to Edwards, Ont.	}	35½	35½	35½

PERE MARQUETTE RAILWAY

22500	Walkerville, Ont.	}	50	50	50
22665	to Rodney, Ont.				
22670	West Lorne, Ont.				
22690	to Middlechurch, Ont.	}	49	49	49
22705	Sarnia, Ont.				
22815	to Erieau, Ont.				

QUEBEC CENTRAL RAILWAY

22900	Beebe Junction, P.Q.		40	(5) 40	(6) 40
22905	Tomifobia, P.Q.			(8) 40	(9) 40
22910	Boynton, P.Q.			(5) 38½	(6) 38½
22915	Ayers Cliff, P.Q.		38½	(8) 38½	(9) 38½
22920	Massawippi, P.Q.		38	(5) 38	(6) 38
22925	North Hatley, P.Q.		37	(5) 37	(6) 37
22960	Ascot, P.Q.		37	(5) 37	(6) 37
22975	East Angus, P.Q.		38	(5) 38	(6) 38
22990	Dudswell, P.Q.	}	38½	(5) 38½	(6) 38½
23000	to Marbleton, P.Q.				
23005	Weedon, P.Q.				
23010	St. Gerard, P.Q.	}	40	(5) 40	(6) 40
23135	to Breakeyville, P.Q.				
23140	Anderson Siding, P.Q.				
23145	Diamond, P.Q.				
23150	Quebec, P.Q.				
23155	Rock Island, P.Q.		40	(5) 40	(6) 40
23160	Stanstead, P.Q.			(8) 40	(9) 40
23175	St. Victor, P.Q.		40	(5) 40	(6) 40
23180	St. Ephrem, P.Q.			(8) 41½	(9) 41½
23185	St. Evariste, P.Q.		40	(5) 40	(6) 40
23200	Courcelles, P.Q.		38½	(5) 38½	(6) 38½
23215	St. Sebastian, P.Q.		38	(5) 38	(6) 38
23235	St. Samuel, P.Q.		37	(5) 37	(6) 37
23255	St. Joseph, P.Q.	}	40	(5) 40	(6) 40
23435	to St. Henedine, P.Q.				
23440	St. Anselme, P.Q.				
23455	to Levis, P.Q.	}	32½	(14) 26½	37½

QUEBEC RAILWAY, LIGHT AND POWER COMPANY

Index No.	To	Rates in cents per 100 pounds		
		Group	From 1 2 3	
23965	Beauport, P.Q.	40	40	40
24045	to St. Joachim, P.Q.			

TEMISKAMING AND NORTHERN ONTARIO RAILWAY

24940	Nahma, Ont.	69	69	69
24945	to Cochrane, Ont.			
25000	Wards, Ont.	73	73	73
25020	to Island Falls Junction, Ont.			
25022	Fraserdale, Ont.	74	74	74
25025	to Coral Rapids, Ont.			
25125	Keyson, Ont.	69	69	69
25160	to Timmins, Ont.			

TORONTO, HAMILTON AND BUFFALO RAILWAY

25220	Port Colborne, Ont.	43	43	43
25300	to Vaughan, Ont.			
25330	Grassie, Ont.	43	43	43
25360	to Ranges, Ont.			
25305	Port Davidson, Ont.	47	47	47
25325	to Port Maitland, Ont.			
25390	Mount Pleasant, Ont.	45½	45½	45½
25410	to Waterford, Ont.			
25365	Mineral Springs, Ont.	45½	45½	45½
25385	to Brantford, Ont.			

WABASH RAILWAY

25460	Bridgeburg, Ont.	43	43	43
25480	to Welland Junction, Ont.			
25485	Marshville, Ont.	47	47	47
25520	to Nelles Corners, Ont.			
25530	Renton, Ont.	45½	45½	45½
25550	to Courtland, Ont.			
25525	Jarvis, Ont.	48½	48½	48½
25565	to Corinth, Ont.			
25615	Glencoe, Ont.	48	48	48
25620	to Newbury, Ont.			
25635	Northwood, Ont.			

WABASH RAILWAY—*Concluded*

Index No.	To	Group	Rates in cents per 100 pounds		
			1	From 2	3
25650	Prairie Siding, Ont.	}	50	50	50
25700	to Walkerville, Ont.				
25710	Niagara Falls, Ont.	}	43	43	43
25730	to Welland, Ont.				

WINDSOR, ESSEX AND LAKE SHORE RAPID RAILWAY

25800	Windsor, Ont.	}	50	50	50
25880	to Leamington, Ont.				

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46784

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of Supplement No. 2 to Canadian Freight Classification No. 18, on file with the Board under file No. 33365.85.7.

WEDNESDAY, the 10th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
 Hon. T. C. NORRIS, *Commissioner.*
 J. A. STONEMAN, *Commissioner.*

Whereas notice has been given by the Canadian Freight Association in the *Canada Gazette*, as required by section 322 of the Railway Act, and copies of the said supplement were furnished to the mercantile organizations enumerated in the general orders of the Board Nos. 271, 348, 353, and 469, with the request that their objections, if any, be filed with the Board within thirty days; and upon consideration of the said objections, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 2 to Canadian Freight Classification No. 18 be, and it is hereby, approved, subject to the following changes and additions, namely:—

Page Rule Section

4 3 5 In the sixth line and in the last line the following will, in each case, be added after the words, "Metal straps or rope"; "Or with wire, gauge No. 16 or thicker."

Page Item

5 2 Change to read:—

"Disks, Harrow or Plough,

In bundles. 2

In barrels, boxes or crates. 3

In packages named, C.L. Min. Wt. 24,000 pounds,
 subject to Rule 7.

L.C.L. C.L.

5 "

Page	Item		L.C.L.	C.L.
9	5	Change to read:— “Compound: Welding, N.O.I.B.N. In fibre or metal cans or cartons in barrels or boxes.. 3 In bulk in barrels or boxes.. 3”		
13	6	Change to read:— “Tea or Tea Dust: In wheeled carriers, metal or metal and wood combined, locked and sealed.. 1 In metal cans in crates.. 1 In barrels or boxes.. 1 In packages named, C.L., min. wt. 24,000 pounds.. . . . 3”		
14	3 and 4,	to be eliminated.		
14	17, 18, and 19,	to be eliminated.		
18	24, 25, 26, and 27,	to be eliminated.		
21	16 and 17,	to be eliminated.		

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46791

In the matter of the complaint of the Town of Megantic, in the Province of Quebec, that the Canadian Pacific Railway Company's viaduct, at the intersection of Agnes Street and Spalding Road, in the said Town, is sufficient to meet the traffic needs at this point.

File No. 37293.

THURSDAY, the 11th day of June, A.D. 1931,

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Sherbrooke, Quebec, May 12, 1931, in the presence of counsel for and representatives of the town of Megantic, the Board of Trade of Lac Megantic, and the railway company, and what was alleged; and upon an examination by the Board of the *locus in quo*,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to provide and install, at its own expense, a sidewalk on one side of the subway at the intersection of Agnes street and Spalding road, in the town of Megantic, with the necessary guard rail to protect same; the sidewalk to be three feet in width, to be placed at a height from the road surface to be decided upon by the town, and to be protected by a guard rail of material and construction suitable to the town authorities.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46802

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2.

THURSDAY, the 11th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders: That the toll published in Supplement No. 45 to Tariff C.R.C. No. E-1235, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 46803

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

THURSDAY, the 11th day of June, A.D. 1931,

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the toll published in Supplement No. 30 to tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 30 to Tariff C.R.C. No. 817, approved herein, is 6½ cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 46808

In the matter of the application of the Detroit and Windsor Subway Company and The Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Supplement No. 2 to Tariff C.R.C. No. 1, covering toll to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5.

SATURDAY, the 13th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' Supplement No. 2 to Tariff C.R.C. No. 1, covering toll to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 46807

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of their Tariff C.R.C. No. 6, covering toll to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

MONDAY, the 15th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' Tariff C.R.C. No. 6, covering toll to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 46820

In the matter of the application of the International Railway Company, hereinafter called the "Applicant Company," for approval of Supplement No. 1, to its Tariff C.R.C. No. 1, covering toll to be charged in respect of the Falls View Bridge and Queenston-Lewiston Bridge, on file with the Board under file No. 36795.7.

MONDAY, the 15th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's Supplement No. 1 to Tariff C.R.C. No. 1, covering toll to be charged in respect of the Falls View bridge and Queenston-Lewiston bridge, on file with the Board under file No. 36795.7, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46847

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

MONDAY, the 15th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published on sugar, less than carloads, from Windsor Junction to Yarmouth, Nova Scotia, in item 295-A of Supplement No. 10 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 295-A of Supplement No. 10 to Tariff C.R.C. No. 856, approved herein, is 20½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46857

In the matter of the application of the Niagara Lower Arch Bridge Company, hereinafter called the "Applicant Company", for approval of its Tariff C.R.C. No. 1, containing tolls to be charged for use of the Lower Arch Bridge at Niagara Falls, on file with the Board under file No. 36795.8.

FRIDAY, the 19th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

The tolls in the said tariff having been examined and found reasonable for the service rendered; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Tariff C.R.C. No. 1 containing tolls to be charged for the use of the Lower Arch bridge at Niagara Falls, on file with the Board under file No. 36795.8, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

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UNIVERSITY OF TORONTO

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, July 15, 1931

No. 9

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Canadian National Railways for authority to construct the tracks of its proposed cut-off near Brantford, across West street, between Lot A, Smith-Kerby Tract, and Lot B, Concession 3, Township of Brantford, County of Brant, and to carry the said West street across the railway by means of an overhead bridge.

For consideration, among other things, of the submissions filed in this matter since the hearing at Brantford on 27th March last.

File 37618.7

REPORT TO THE BOARD, AFTER HEARING, BY COMMISSIONER STONEMAN

THIS REPORT IS ISSUING AS THE JUDGMENT OF THE BOARD IN THIS MATTER

Under section 12 of the Railway Act, being thereunto authorized by Order of the Board No. 46779, dated June 9, 1931, and signed by the Assistant Chief Commissioner of the Board, I arranged to hear the parties in evidence in this matter, at Brantford, on June 12, 1931.

In reviewing the file, I find an application of the Canadian National Railways, dated November 28, 1930, and made under section 256 of the Railway Act, for approval of Plan No. 6207, showing a proposed subway at the crossing of West street, between lot A, Smith-Kerby Tract, and lot B, concession 3, township of Brantford, and county of Brant.

All the interested parties agreed to the approval of this plan, and the Board's Order No. 45868, dated December 2, 1930, issued, approving the plan and authorizing the construction of the subway.

On February 5, 1931, a letter was received by the Board, from the Canadian National Railways in the following terms:—

"A. D. CARTWRIGHT, Esq.,

"Secretary, B.R.C.,

"Ottawa, Ont.

"MONTREAL, February 5, 1931.

"*File 37618.7—Proposed Crossing of West street, township of Brantford, Ontario*

"DEAR SIR,—Order of the Board No. 45868, dated December 2, 1930, authorized the construction of a subway at West street, which was what we originally proposed to construct.

"Our construction engineers are now in the field and have made more careful surveys in reference to the construction of this subway, and find

that it will be very difficult and expensive to obtain proper drainage, so that we wish to revise our grade of the new line and construct an overhead bridge at West street, instead of a subway, as shown on attached drawing C-6529, two linen and two paper prints of which are enclosed herewith.

"This matter was taken up direct by our Toronto officials with the Suburban Area Commission, who have control of this street, and I enclose original of the county engineer's letter to Mr. R. A. Baldwin, our engineer of construction at Toronto, from which it will be noted that they are opposed to the suggested change.

"I would be glad if the Board would arrange for one of its engineers to visit this crossing, as we are anxious to obtain the approval of the attached plan, so that the work will not be delayed.

"If your engineer who is to make the inspection will get in touch with our chief engineer's office at Toronto, arrangements will be made to furnish him with all the information he may require.

"Yours truly,

"(Sgd.)

ALISTAIR FRASER,

"Assistant General Counsel."

The Board's Division Engineer (Mr. Kilburn) made an inspection on February 13, 1931, and submitted his report to the Board on February 16, 1931, recommending approval of the plans and the construction of the proposed overhead bridge.

Exception was taken to approval being given to the plans without a hearing, by the Suburban Area Commission of the county of Brant; the county of Brant; the city of Brantford, and the Grandview Ratepayers' Association of Brantford. A hearing was, therefore, arranged and the matter heard at Brantford, on March 27, 1931. The Suburban Area Commission of the county of Brant and the city of Brantford appeared in opposition to the application, and Mr. A. D. McDonald appeared for the Canadian National Railways. Following the hearing, referred to above, further submissions in the form of a letter addressed to Mr. Alistair Fraser, K.C., and written by Mr. T. T. Irving, Chief Engineer, Canadian National Railways, Toronto, were sent to the Board on April 8, 1931. Subsequently, objections were filed by Messrs. Brewster & Heyd, representing the county of Brant and the Suburban Area Commission of the county of Brant, to any further submissions being considered by the Board without an opportunity being given the interested parties to be heard, and a further hearing was therefore arranged and held at Brantford on June 12, 1931.

The Canadian National Railways submit that the reason for the new application, viz., for an overhead bridge, in lieu of a subway, as originally proposed, is because on a further study being made by the company's engineers, it was ascertained that it would be difficult and costly to drain a subway. In order to maintain a six-tenths grade, thereby facilitating the movement of trains, it would be necessary to raise the grade of the main line, thus creating a hump which would add considerably to the cost of the work.

The Suburban Area Commission admit that the submissions of the Canadian National Railway Company are correct, but maintain that the company should have been aware of the difficulties referred to before they filed their first plans for approval and order of the Board No. 45868 issued.

The city of Brantford and the Suburban Area Commission of the county of Brant, at the sittings held in Brantford on March 27, 1931, contended as their main objections, that an overhead at this point would be an unsightly structure in so far as the surrounding country is concerned, and unsafe in so far as the traffic on the highway is concerned. They also object to the depression of the

railway tracks, because they foresee the section through which the line passes becoming an industrial area, and they believe it would be difficult, if not impossible, to have sidings constructed to serve the various industries which they contemplate would locate in their locality. The Canadian National Railway Company, on the other hand, contend that they would have no difficulty in serving industries with sidings in the future if they should locate in the area through which the depressed tracks are to pass.

This is an application of the Canadian National Railways for authority to construct the tracks of its proposed cut-off near Brantford, across West street, between lot A, Smith-Kerby tract, and lot B, concession 3, township of Brantford, county of Brant, and to carry the said West street across the railway by means of an overhead bridge. The application comes under section 256 of the Railway Act, and by this section the Board is empowered to grant relief to the travelling public, in whole, or in part, and upon such terms and conditions as to protection, safety and convenience as the Board deems expedient.

The railway company's proposal is to separate the grades by way of an overhead structure. In so far as I know the Board has always considered grade separation most desirable from the standpoint of protection, safety and convenience to the travelling public. Thus bearing in mind that either method of grade separation would be considered by the Board as safe and convenient to those using it, the question arises as to whether the Board would be justified in ordering the railway company to expend the additional moneys necessary to meet the wishes of the parties opposing this application.

The estimated cost of the bridge to carry the highway over the railway would be in the neighbourhood of \$33,000, while the cost of the subway, including other necessary works incidental thereto, is estimated at approximately \$89,000; which latter cost is made up of \$63,000 for the construction of the subway and drainage, plus \$26,000, which is estimated as the approximate cost of raising the grade of the main line. The saving in the cost of construction would, therefore, amount approximately to \$56,000.

I therefore recommend that Order No. 45868, dated December 2, 1930, be rescinded, and a new order issue, permitting the Canadian National Railways to erect an overhead bridge at the point in question, for the protection, safety and convenience of the travelling public, as shown on plan filed with the Board and numbered C-6529; it being understood that the roadway is to be 36 feet in width instead of 34 feet, as now shown on the plan as filed.

OTTAWA, June 22, 1931.

A. D. CARTWRIGHT,
Secretary, B.R.C.

ORDER No. 46883

In the matter of the Order of the Board No. 45868, dated December 2, 1930, approving the Canadian National Railway Company's plan and profile No. C-6207, dated Toronto, November 15, 1930, showing proposed subway at the crossing of West street, concession 3, in the township of Brantford, county of Brant, and province of Ontario;

And in the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under section 256 of the Railway Act, for authority to construct the tracks of its proposed cut-off near Brantford across West street aforesaid, between lot A, Smith-Kerby tract, and lot B, concession 3, in the township of Brantford, and to carry the said West street across the railway by means of an overhead bridge, as shown on the plan and profile dated Toronto, March 31, 1931, on file with the Board under file No. 37618.7.

TUESDAY, the 23rd day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Brantford, March 27, 1931, in the presence of counsel for the applicant company, the Suburban Area Commission, and the city of Brantford, and what was alleged; and evidence in this application having also been heard at Brantford, on June 12, 1931, by a commissioner appointed under section 12 of the Railway Act, in the presence of counsel for the applicant company, the township of Brantford, the Suburban Area Commission, and the county of Brant, the said commissioner having reported to the Board, and the said report having been adopted,—

It is ordered:

1. That the said Order No. 45868, dated December 2, 1930, be rescinded.

2. That the applicant company be, and it is hereby, authorized to construct the tracks of its proposed cut-off near Brantford across West street, between lot A, Smith-Kerby tract, and lot B, concession 3, in the said township of Brantford, and to carry the said West street across the railway by means of an overhead bridge, as shown on the plan and profile numbered C-6529 on file with the Board under file No. 37618.7; the roadway to be 36 feet wide instead of 34 feet as shown on the said plan; and detail plans to be filed for the approval of an Engineer of the Board.

S. J. McLEAN,

Assistant Chief Commissioner.

In the matter of protection of the double tracks of the Canadian National Railways at St. Hubert Crossing, Portland Division, Montreal District, by means of Automatic Highway Crossing Gates known as the "Farnsworth Gates" and the application of the Canadian National Railways to be allowed to remove these gates from the said crossing.

File 9437.1086

JUDGMENT

COMMISSIONER NORRIS:

Following an accident at this crossing in September, 1913, the Board's Order No. 22147, dated July 4, 1914, required the Canadian National Railways to install an improved type of automatic electric bell thereat, this to protect both tracks.

In July, 1918, two accidents occurred at this crossing, and the Board's inspector in reporting on these accidents, called attention to the apparent insufficiency of the protection, and recommended that consideration be given to the installation of a set of gates at this point.

Considerable negotiation with the Canadian National Railways followed, and the matter of protection of this crossing by gates was heard at Montreal on January 16, 1919. The municipality was not represented and the Board did not order any change in the protection at the point in question. Following the hearing the municipality was asked for its views as to the sufficiency and suitability of the bell protection there, but it refrained from making any recommendation and left the matter in the hands of the Board. Further inspection of this crossing was made in June, 1920, following an accident, no question being raised at that time as to the sufficiency of the bell protection.

In December, 1921, the Municipal Council of the County of Rouville filed a resolution calling the attention of the Board to the alleged insufficient nature

of the bell protection at this crossing, but the then Chief Commissioner ruled that, as the conditions were identical with those obtaining at the St. Hubert crossing at the time of the last previous inspection in 1920, no further protection was necessary.

Following an accident at this crossing in October, 1924, the Board's inspector reported that owing to the increase in highway traffic at this point, one bell was no longer adequate, and recommended also that the grades at the crossing be improved. Order of the Board No. 36096 accordingly issued under date of February 11, 1925, requiring the installation by the Canadian National Railways of

“two modern type electric bells and wig-wag signals, one on each side of the said crossing”

and on June 1, 1925, these bells and wigwags having been found by the Board's Inspectors to be properly installed and in good working order, and the approaches to the crossing having been brought up to standard, Order of the Board No. 36423 issued, declaring it to be protected to the satisfaction of the Board.

Early in 1927 the Dominion Automatic Gate Company of Montreal and Granby, Que., made application to the Board to be allowed to install double Farnsworth automatic gates at St. Hubert crossing for a *thorough demonstration and test* of this device, and asked that the Board secure the permission of the Canadian National Railways to this arrangement. On the instructions of the then Deputy Chief Commissioner, the Canadian National Railways was written as follows:—

“OTTAWA, April 11, 1927.

“ALISTAIR FRASER, K.C.,

“Commission Counsel,

“Canadian National Railways,

“Montreal.

“*File 26782.72; in re Farnsworth Automatic Gate*

“DEAR SIR,—I am directed to ask your company to permit the Dominion Automatic Gate Company to install double gates on the double tracks, for demonstration purposes and test, at St. Hubert crossing, in addition to the bell and wig-wag already installed there under authority of Orders 36096, of February 11, 1925, and 36423, of June 1, 1925; the gates to be in addition, and without any understanding that the additional protection is, in the opinion of the Board, necessary.

“Your truly,

“(Sgd.) A. D. CARTWRIGHT,

“*Secretary, B.R.C.*”

The Canadian National Railways protested against the installation of this gate at St. Hubert, alleging that their test of the same device at the first crossing west of Ayrness, Que., had “demonstrated that the ‘Farnsworth’ automatic gate is not sufficiently effective and its operation not all that could be desired”. Later, under date of May 14, 1927, the Canadian National Railways advised the Board that they had discontinued the trial of the “Farnsworth” automatic gate at Ayrness, Que., on the 30th of April of that year.

After considerable negotiation between the then Deputy Chief Commissioner, the Dominion Automatic Gate Company, the Canadian National Railways, and investigation and report by the Board's Chief Operating Officer, the Railway Company was required, by the Board's Order No. 39513, of date September 2, 1927, to permit the installation of the “Farnsworth” automatic gate at the crossing by its railway of the Montreal-Sherbrooke highway near

St. Hubert station, Que., for demonstration purposes and test, it being provided by the order that

“such installation not to interfere in any way with the bell and wig-wag signals now in operation at the said crossing.”

On March 5, 1928, an Inspector of the Board reported that the “Farnsworth” automatic gate at St. Hubert was not working properly; later in the same month the Assistant Chief Engineer of the Board found these gates to be in good working order but recommended that the tests be continued through the heavier spring, summer and fall traffic, and that inspection be made from time to time in these periods.

On June 29, 1928, the then Deputy Chief Commissioner accompanied by the Board’s Chief Engineer and Chief Operating Officer, made an inspection of the “Farnsworth” automatic gates installed at St. Hubert. At this inspection there were present representatives of the Dominion Automatic Gate Company and of the Canadian Pacific and Canadian National Railways, and the technical objections of the railway companies to these gates were explained in detail.

On August 14, 1928, the Canadian National Railways protested strongly to the Board against the further participation by the railway in the experiment with these gates, the letter of protest reading, in part, as follows:—

“My instructions are that the officials of both the Canadian National and the Canadian Pacific Railways have reached the final conclusion that this automatic gate is without merit as a protective device, and that its defects further constitute a definite menace, and that it should be removed. We are of opinion that an exhaustive and thoroughly fair test has been given to the gate and that the Canadian National Railways should not be called upon to participate further in the experiment. . . . In passing, it is perhaps worthy of note that, so far as I am aware, there is no installation such as this on any American railway, although the idea of an automatic gate is far from a new one.

“If our officials were of the opinion that the test so far, although quite unsatisfactory, had demonstrated the feasibility of the principle of the automatic gate and its usefulness, but that it required only modification in order to make it more perfect than it is, we would feel inclined to conduct the experiment to the point where the merit of such improvement would be definitely proved on the ground, but the fact is, as above stated, that the technical officers of both companies are convinced that the gate is fundamentally unsound, and that it is not a case of improvements being installed which would remove the defect, but that in fact there is nothing which could be done which would alter the opinion of these officers that the experiment should be discontinued and the gates permanently removed.”

On October 9, 1928, the railway company forwarded to the Board a detailed report prepared by its Engineering Department, giving the technical details of their objections to the “Farnsworth” gate and giving it as their considered opinion that

“the gate is fundamentally unsound in theory and in practice and we consider it a source of danger and not of protection”.

A number of recommendations were made by the Board’s Engineering and Operating Departments to the Dominion Automatic Gate Company with regard to the placing and operation of these gates at St. Hubert, and on October 12, 1928, the Chief Operating Officer of the Board who visited the crossing in company with Division Engineer Belanger, reported the device to be working satisfactorily.

The Dominion Automatic Gate Company continued to press upon the Board their application to have the "Farnsworth" automatic gate recognized by order as permanent instalment at St. Hubert crossing and made a formal application through their solicitor for such permanent instalment, and for a grant from the Railway Grade Crossing Fund towards the cost of same. Letters were received from some of the residents of the district asking that the gates be not removed, and the council of the parish of St. Hubert made formal application, by resolution of the council for the issuance of an order directing that these gates be permanently installed by the Canadian National Railways; that forty per cent be contributed towards the cost from the Railway Grade Crossing Fund and that the balance be a charge upon the railway company.

On May 29, 1929, on the direction of the then Deputy Chief Commissioner, Order of the Board No. 42690 issued, providing for the "permanent" installation of the "Farnsworth" automatic gates at the St. Hubert crossing, this order further providing that,—

"the installation of the said 'Farnsworth' automatic gates being hereby approved in lieu of the said bell and wig-wag, and the Canadian National Railway Company being hereby relieved of the maintenance cost of such bell and wig-wag. . . . That forty per cent of the cost of installing the said 'Farnsworth' automatic gates be paid out of the Railway Grade Crossing Fund, forty per cent by the railway company, and twenty per cent by the municipality of St. Hubert; the cost of maintenance to be borne and paid by the railway company."

On the suggestion of its Chief Engineer of Operation the Canadian National Railways accepted this order under protest; the company pointed out that it was already on record as being strongly opposed to the retention of the "Farnsworth" automatic gate, and wished to go on further record that the gate did not meet with the approval of its engineers.

In October, 1929, the Board's Division Engineer who inspected the layout reported that the gates were not arranged to cover back-up movements; that this could be arranged by the installation of some additional machinery the cost of which would require to be added to the original estimate. This officer reported that otherwise the gates were working satisfactorily at the time of his inspection.

Early in 1930 trouble began to develop in the operation of these gates; photographs taken by an engineer of the railway company on February 20, 1930, showing only one gate working, were filed with the Board, and the Automatic Gate Company upon being requested to apply the necessary remedy to prevent recurrence, disclaimed responsibility, invoking the provisions of the Board's order which, they alleged, placed the responsibility for the maintenance of the gates upon the railway company. The Board ruled that this, being clearly a defect in construction, it must be remedied by the builders, but no definite undertaking has ever been secured from the Automatic Gate Company in this regard.

On June 10, 1930, the Canadian National Railway filed with the Board a statement setting forth the dates on which the gates had been out of order between April 5 and May 9, 1930. This statement showed a total of 337½ hours during which the gates at St. Hubert were not working, between the dates given above, and a total cost of \$204.47 paid by the railway company to watchmen at this crossing during the period in question. The railway company in the letter accompanying this report set forth as follows:—

"We have been having a great deal of trouble with these gates and for the Board's information I enclose copy of a statement showing the dates on which they were out of order between the 5th of April and the 9th of May.

"We have also had the gates under observation on the part of our supervisory officers who have been in the vicinity a good deal during the period of construction work on the new airport, and as a result, it has been necessary to eliminate the automatic features and provide for manual operation meantime and until we have an opportunity of presenting conditions at this point to the Board in a formal way."

No proper explanation has ever been submitted to the Board by the Dominion Automatic Gate Company for the failure of these gates to work satisfactorily, nor has any serious attempt ever been made by this company to remedy the defects in mechanism which cause the trouble.

In December, 1930, following continued complaints regarding the working of these gates, the Board's inspector sent to investigate reported the southbound gates being operated by a flagman from an electric switch at the west end of the station platform; he further reported the northbound gates out of service due to batteries not being charged. Upon this being taken up with the railway company, the then Chief Commissioner was advised by the railway company's counsel that the gates worked so badly that it was necessary to put a watchman in charge to operate them, and application was made under date of February 16, 1931, to be allowed to remove the gates entirely from this crossing.

On February 27, 1931, the Board's Division Engineer reported on his inspection of these gates, in company with the Superintendent of Signals and the Signal Supervisor of the Canadian National Railways. He reported that at the time of his visit only three of the four arms of the double gates were working; that one arm has been out of order for about five weeks on account of the burning of the rectifier; that the automatic feature for the operation of the gates is not satisfactory and is not in use, the gates having been operated by manual control for twenty-four hours each day since the 9th of June, 1930. He states further:—

"It appears that the electrical units are faulty on account of their poor design and construction; that the rectifiers are not large enough and the batteries have been found to be very poor, and so far one set has been renewed about two months ago. In addition, before the gates were manually controlled the batteries had to be taken out for recharging almost every week. They have been taken out twice since the gates have been operated by manual control. A good deal of construction work was going on last summer in connection with tracks into the St. Hubert airport; this occasioned a good deal of traffic over the crossing, and it appears that the gates could not be relied upon in their automatic features".

On April 24, 1931, the Canadian National Railways submitted a detailed statement prepared by their Engineering Department, setting forth the alleged seriously faulty protection afforded by these gates, aside from the mechanical and electrical defects alleged to exist in the device itself.

The Board's Electrical Engineer, who inspected the "Farnsworth" automatic gates at St. Hubert on March 24, 1931, reports as follows:—

"The electric switches, the vital parts of the installation which are reported to have been the cause of many out-of-order reports, are roughly made and do not look like devices which would function with regularity or reliability. The Signal Supervisor of the Canadian National Railways complained that replacements or repairs had to be made with hand made parts, because the devices in question had never been standardized, and spare parts could not be secured.

"In order to make the installation work in a reasonably reliable fashion, a signal engineer would have to be given carte blanche to redesign and renew a great deal of it. The railway on July 17, 1929, made a very strong protest against the Board's order to install the gates

in question; their officials said, 'The gate is fundamentally unsound, in theory and in practice, and we consider it a source of danger and not of protection'. With that official pronouncement in view, they could hardly be expected to do more, in maintaining the gates, than to replace broken down parts with others of the same design. That seems to have been done. Had they done otherwise, they would have been open to criticism if other failures took place.

"As at present equipped, continuous reliable operation of these gates is not to be expected."

In view of the foregoing, and especially of the reports of the Board's Engineering Department, I am convinced that, quite apart from the question of the effectiveness of automatic gates in the protection of highway crossings, this particular set of gates at St. Hubert, has not proved satisfactory, after thorough demonstration and test. I am of opinion therefore that the application of the Canadian National Railways to be allowed to remove these "Farnsworth" gates from St. Hubert crossing should be granted, the crossing to be thereafter protected by the double bells and wig-wags installed under the Board's Order No. 36096, of date February 11, 1925, and that order granting this application should issue forthwith.

Order of the Board No. 42690, of date May 29, 1929, which provided for the permanent installation of these gates at St. Hubert crossing should be rescinded.
OTTAWA, June 23, 1931.

Assistant Chief Commissioner McLean and Commissioner Stoneman concurred.

ORDER No. 46931

In the matter of the Order of the Board No. 39513, dated September 2, 1927, as amended by Order No. 42690, dated May 28, 1929, requiring the Canadian National Railway Company to permit the installation of the "Farnsworth" automatic gates, so-called, at the crossing of the Montreal-Sherbrooke highway, near St. Hubert station, in the province of Quebec; and the application of the Railway Company for leave to remove the said gates.

File No. 9437.1086

SATURDAY, the 27th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed in support of the application, and the report and recommendation of an Engineer of the Board and of its Electrical Engineer, concurred in by the Chief Engineer,—

The Board orders: That the said Orders Nos. 39513 and 42690, dated respectively September 2, 1927, and May 28, 1929, be rescinded; and that the Canadian National Railway Company be, and it is hereby, authorized to remove the said "Farnsworth" automatic gates from the crossing by its tracks of the Montreal-Sherbrooke highway, near St. Hubert station, in the province of Quebec; the crossing to be protected thereafter by the double bells and wig-wags installed under the Order of the Board No. 36096, dated February 11, 1925.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46868

In the matter of the application of the International Railway Company, hereinafter called the "Applicant Company," for approval of Tariff C.R.C. No. 1, covering tolls to be charged in respect of the Falls View Bridge and Queenston-Lewiston Bridge, on file with the Board under file No. 36795.7.

MONDAY, the 15th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's Tariff C.R.C. No. 1, covering tolls to be charged in respect of the Falls View bridge and Queenston-Lewiston bridge, on file with the Board under file No. 36795.7, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46859

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 22nd day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders: That the toll published in Supplement No. 18 to Tariff C.R.C. No. E-1250, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46892

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

TUESDAY, the 23rd day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

That the tolls published in Supplement No. 9, to Tariff C.R.C. No. E-1504 and in Tariff No. E-1745, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46889

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under section 256 of the Railway Act, for authority to construct their proposed cut-off across Park Road at grade level, in lots 36 and 37, concession 3, township of Brantford, county of Brant, near Brantford, in the province of Ontario, as shown on the plan and profile revised January 29, 1931, on file with the Board under file No. 37618.

THURSDAY, the 25th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Brantford, March 27, 1931, in the presence of counsel for the applicants, the township of Brantford, and other interested parties, Franklyn Smoke appearing in person, and what was alleged; and upon the report and recommendation of an Engineer of the Board,—

It is ordered: That the applicants be, and they are hereby, authorized to construct their proposed cut-off across Park road, at grade level, in lots 36 and 37, concession 3, township of Brantford, county of Brant, near Brantford, in the province of Ontario, as shown on the said plan and profile on file with the Board under file No. 37618, and in accordance with "The Standard Regulations of the Board Affecting Highway Crossings."

S. J. McLEAN,
Assistant Chief Commissioner.

 ORDER No. 46980

In the matter of the application of the Confederated Freight Association, of Toronto, Ontario, for a ruling by the Board as to the legal rate on a carload shipment of cast-iron pipe from Three Rivers, Quebec, to Glace Bay, Nova Scotia, shipped May 14, 1928, on the lines of the Canadian Pacific, Canadian National, and Sydney and Louisburg Railways.

File No. 37988

FRIDAY, the 26th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board,—

The Board declares: That the legal rate applicable to the said carload shipment of cast-iron pipe from Three Rivers, Quebec, to Glace Bay, Nova Scotia, was 52 cents per 100 pounds, under the provisions of Tariff C.R.C. No. E-3832 of the Canadian Pacific Railway Company and Tariff C.R.C. No. 22 of the Sydney and Louisburg Railway Company.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46990

In the matter of the application of the Niagara Lower Arch Bridge Company, hereinafter called the "Applicant Company," for approval of Supplement No. 1, to tariff C.R.C. No. 1, containing tolls to be charged for use of the Lower Arch Bridge at Niagara Falls, on file with the Board under file No. 36795.8.

FRIDAY, the 3rd day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 1 to the applicant company's Tariff C.R.C. No. 1, containing tolls to be charged for the use of the Lower Arch bridge at Niagara Falls, on file with the Board under file No. 36795.8, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46991

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

FRIDAY, the 3rd day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 140-B of Supplement 13 to Tariff C.R.C. No. E-4368, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 140-B of Supplement 13 to Tariff C.R.C. No. E-4368, approved herein, is \$1.75 per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 46992

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

FRIDAY, the 3rd day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 115-B of Supplement No. 6 to Tariff C.R.C. No. E-4369, filed by the Canadian Pacific Railway Company under sec-

tion 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 115-B of Supplement No. 6 to Tariff C.R.C. No. E-4369, approved herein, is \$1.69 per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 46993

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

FRIDAY, the 3rd day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 564 of Supplement No. 39 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 564 of Supplement No. 39 to Tariff C.R.C. No. E-4312, approved herein, is 30 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47003

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34882.13.

SATURDAY, the 4th day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 126 of Supplement No. 12 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Item 126 of Supplement No. 12 to Tariff C.R.C. No. 856, approved herein, is 10 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47004

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 4th day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 51 of Supplement No. 13 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 51 of Supplement No. 13 to Tariff C.R.C. No. 856, approved herein, is 43 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47005

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 4th day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 140 of Supplement No. 31 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 140 of Supplement No. 31 to Tariff C.R.C. No. 817, approved herein, is 13½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47006

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 4th day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 89 of Supplement No. 22 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of

the Maritime Freight Rates Act, be, and it is hereby approved subject to the provisions of subsection 2 of section 3 of the said Act; the Dominion Atlantic proportion to be reported at 9·8 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal toll which but for the said Act would have been effective in lieu of that published in the said item 89 of Supplement No. 22 to Tariff C.R.C. No. 812 is 12·3 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47007

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 4th day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Avonport, Nova Scotia, to Kentville, Nova Scotia, in item 5-B of Supplement No. 14 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Item 5-B of Supplement No. 14 to Tariff C.R.C. No. 811, approved herein, is 5 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47008

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 4th day of July, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 45 and 110-A of Supplement No. 32 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of those published in the said items

45 and 110-A of Supplement No. 32 to Tariff C.R.C. No. 817, approved herein, are as follows:—

Item	From	To	Rates in cents per 100 lbs.
45	Brooklyn, N.S.	Windsor Junction, N.S.	5
	Scotch Village, N.S.	Windsor Junction, N.S.	5
	Mosherville, N.S.	Windsor Junction, N.S.	5
	Clarksville, N.S.	Windsor Junction, N.S.	5½
	Kennetcook, N.S.	Windsor Junction, N.S.	5½
	Pattersons, N.S.	Truro, N.S.	4½
	Doddridge, N.S.	Truro, N.S.	4½
	South Maitland, N.S.	Truro, N.S.	4
110-A	Kingston, N.S.	Truro, N.S.	14
	Wilmot, N.S.		
	Middleton, N.S.		

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF APRIL, 1931

Railway accidents 137, involving 17 persons killed and 166 injured.
Railway accidents at highway crossings.... 25, involving 9 persons killed and 37 injured.

	Killed.	Injured.
Passengers..	—	42
Employees..	7	96
Others..	19	65
Total..	26	203

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	PROVINCE OF QUEBEC
1	Auto truck—Driver failed to stop for crossing: Que. licence L-4566.
	PROVINCE OF ONTARIO
6	Automobile—Ran into side of train. Ontario licences 654M, MZ-894, EV-846, EA-714, U-3608, 44550-C.
1	Automobile—Auto skidded and crashed through lowered gates: Ontario licence E-6365.
1	Automobile—Excessive speed of auto: Ontario licence O-631.
1	Automobile—Reckless driving: Ontario licence LO-498.
7	Automobile—Ontario licences FH-515, O-989, X-5050, Z-6244, U-3094, 31659-C, X-3093.
1	Grader.
1	Wagon.
1	Pedestrian.
	PROVINCE OF MANITOBA
1	Automobile—Ran into speeder: Sask. licence 50434.
1	Automobile—Manitoba licence 41-506.
	PROVINCE OF ALBERTA
1	Automobile—Auto stalled on crossing: licence Alta. 52-776.
	PROVINCE OF BRITISH COLUMBIA
1	Automobile—Ran into side of train: licence B.C. 47-811.
1	Pedestrian—Pedestrian disregarded gateman's warning.

Of the twenty-five accidents at highway crossings, seven occurred at protected crossings and eighteen at unprotected crossings. Seventeen of the accidents occurred during daylight hours and eight during the night hours.

OTTAWA, July 8, 1931.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

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No. 10

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Application of the Nipissing Central Railway Company for leave to appeal to the Supreme Court of Canada from Order No. 46459 of the Board of Railway Commissioners for Canada, dated March 20, 1931, and from the Judgment of Mr. Commissioner Stoneman, dated March 18, 1931, in the matter of trestle carrying the Nipissing Central Railway over Booth Creek, in the Township of Dasserat, District of Temiskaming, P.Q.

File 11014.36 Pt.2.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Reference is made to the decision of the Privy Council in *Canadian Pacific Railway Co. vs. Toronto Transportation Commission et al*, 37 Can. Ry. Cases, 203, at p. 212. The decision so referred to is relied upon by the applicant as establishing that the question whether the party is "interested or affected by" works ordered by the Board within the meaning of section 39 involves a question of law. The decision states that the "finality provisions" set out in section 39 of the Railway Act have not in the past been held to preclude the courts in Canada or the Privy Council from determining on appeal as a question of law whether a company, municipality, or person was interested or affected within the meaning of the statute, so as to confer jurisdiction on the Railway Board.

With deference, it is submitted that this simply means that the Appellate Courts have not felt themselves precluded from determining on appeal as a question of law whether a party is interested or affected by a work so as to confer jurisdiction on the Board.

A reading of the whole judgment establishes, it is submitted, that the question is one of fact and not of law. (The words italicised in the following text are not italicised in the Judgment.) After reciting the material facts, the judgment reads:—

"On these facts was the Transportation Commission interested in or affected by the construction of the subways?" P. 212.

At p. 213 the question was raised: Does the fact that at the time of the order for the construction of the subways the street railway of the Transportation Commission did not cross the other railways deprive the Board of jurisdic-

tion to order the commission to contribute to the cost of the subways? In answer, their Lordships of the Privy Council said that this circumstance, while no doubt an important negative element, was not necessarily conclusive of absence of interest or affection. "The whole circumstances must be taken into account."

At p. 214 their Lordships stated that in making an order for contribution to the cost of works the Board is entitled to have regard to "*the state of matters existing when the Order for contribution is made.*"

At p. 224, in referring to *Toronto Railway Co. vs. Toronto City* it was said that "no one could be ordered to contribute *unless he could be shown to be interested in or affected by the works directed to be executed.*"

In the case of *County of Carleton vs. City of Ottawa*, 9 Can. Rly. Cas. 154, cited by Mr. Greene, Mr. Justice Davies, in delivering the judgment of the Supreme Court, says:—

"The decision of the Board as to whether a municipality was or was not a party interested was made by the statute binding and conclusive. It is a question of fact to be determined upon all the circumstances of each case." P. 157.

The appeal provided for in the Act is upon any question "*which, in the opinion of the Board, is a question of law.*"

The Board decided as a fact, not as a matter of law, that in the circumstances of this case the J. R. Booth Company was not interested in and would not be affected by the works the Nipissing Central seeks to have constructed, and for this reason dismissed the application. It neither directed nor permitted any works to be constructed or reconstructed, and section 39, therefore, does not apply.

It must be clear from section 52, subsection (6) of the Railway Act, that the court cannot disturb facts expressly found by the Board.

The application for leave to appeal to the Supreme Court of Canada from order of the Board No. 46459, fails.

OTTAWA, July 21, 1931.

Commissioner Stoneman concurred.

Application of the Canadian Pacific Railway Company for an Order authorizing the discontinuance of trains Nos. 601 and 602 between Tweed and Havelock, Ontario.

File 27563.67

COMMISSIONER STONEMAN:

On March 31, 1931, the Canadian Pacific Railway Company applied to the Board for an order authorizing the discontinuance of trains Nos. 601 and 602, which, under order of the Board No. 27546 of August 2, 1918, put into effect local train service between Tweed and Havelock, Ontario, during the period from April 15 to December 1 in each year.

A copy of the railway company's application was duly served on the Reeves of the municipalities of Tweed, Madoc, Elora, and Mamora, respectively, and the Peterborough Chamber of Commerce, for their information and submissions.

Protests were filed by the interested parties and the matter was set down for hearing at Tweed on July 10, 1931; the Town of Tweed, the local Board of Trade and the Canadian Pacific Railway Company being duly represented.

The Canadian Pacific Railway Company filed statements showing earnings and the cost of operation. Statement (F) of Exhibit No. 4, covering the months

of May and June clearly sets out the existing conditions, from which I quote the following figures:—

	No. 601		No. 602	
	Passengers	Revenue	Passengers	Revenue
May, 1931..	49	\$ 34 40	112	\$ 83 40
Daily average..	1.9		4	
June, 1931..	57	37 60	129	98 75
Daily average..	2.1		4.9	
Totals for two months.. . . .	106	\$ 72 00	241	\$182 15
Average per day..	2	\$ 1 38	4.6	\$ 3 50
Total passengers carried on 601 and 602 between Havelock and Tweed for May and June—				
No. 601..				106
No. 602..				241
Total..				347
Average per day on both trains..				6.7
Average earnings per day passengers..				\$ 4 88
Average earnings per day express..				8 33
				\$13 21
Average daily cost based on out of pocket basis..			\$41 73	
Average daily loss..				\$28 52
Average daily cost based on inclusive cost..			\$66 55	
Average daily earnings..			\$13 21	
				\$53 34
Average daily loss..				

Those appearing in opposition to the railway's application admit, in evidence, that although the figures submitted by the railway company are probably correct, they desired to emphasize the necessity for adequate train service, and they pointed out the inconvenience to the residents of the districts if locals Nos. 601 and 602 were permitted to cease operating. A suggestion was put forth that alteration might be made in the time of the night Toronto-Ottawa passenger trains in order to permit passengers to leave and arrive at more convenient hours and allow them to entrain and detrain at the same stations as Nos. 601 and 602, which would include Ivanhoe, Bonar Law, Tiffin and Blairton, in substitution for the service which the locals now afford.

Local trains Nos. 601 and 602 between Tweed and Havelock have been in operation since 1918, but in addition to these local trains there are two passenger trains, daily except Sunday, in each direction, running between Toronto, Ottawa and Montreal, respectively; eastbound, passing Tweed at 1.35 a.m., daily, and 1.28 p.m., daily except Sunday; westbound, 3.33 a.m., daily, and 1.55 p.m., daily except Sunday. The day trains now give service at the same points intermediate between Tweed and Havelock as the local trains Nos. 601 and 602, which the company are now asking to be relieved from running, and the night trains make conditional stops at Ivanhoe and Bonar Law.

If the suggestion regarding the rearrangement of the time-table to give a service at more convenient hours were made it would necessitate undue alteration and rearrangement in the time-tables of the company's main line passenger trains running between Toronto, Ottawa and Montreal.

I have given very careful consideration to all the submissions filed as well as the evidence taken at the sittings at Tweed on July 10. It has been shown by the railway company conclusively, that there is a heavy deficit in the operation of these local trains, and while it must be admitted that there will undoubtedly be some inconvenience to the residents of this district, it must also be borne in mind that this locality will continue to have a day and night service in either direction if the locals are discontinued.

The Board has allowed extensive reductions in passenger train service on both main and branch line service wherever serious loss in operation is shown

to exist. The statement of figures filed by the railway company, in the present case, show the railway company's losses to be such that, in my opinion, the Board would be justified in granting its application, subject to the provisions being made to stop its night Toronto-Ottawa passenger trains, to allow passengers to entrain and detrain at Ivanhoe and Bonar Law.

I recommend that order issue accordingly.

OTTAWA, July 22, 1931.

Assistant Chief Commissioner and Commissioner Norris concurred.

ORDER No. 47053

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 30th day of June, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 44 to Tariff C.R.C. No. E-1237.

Supplement 46 to Tariff C.R.C. No. E-1235.

Supplement 17 to Tariff C.R.C. No. E-1247.

Supplement 12 to Tariff C.R.C. No. E-1258.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47023

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

SATURDAY, the 4th day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll of \$1.30 per ton on coal from Minto, New Brunswick, to Edmundston, New Brunswick, published in Supplement No. 7 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 7 to Tariff C.R.C. No. 160, approved herein, is \$1.70 per ton.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47062

In the matter of the application of the Sydney and Louisburg Railway Company, hereinafter called the "Applicant Company," under the provisions of the Maritime Freight Rates Act, for approval of Supplement No. 1 to its Standard Freight Tariff C.R.C. No. 19, on file with the Board under file No. 34822.8.

MONDAY, the 13th day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That Supplement No. 1 to the applicant company's Standard Freight Tariff C.R.C. No. 19, on file with the Board under file No. 34822.8, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47080

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 14th day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in the following supplements filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3, namely:—

Supplement 4 to E-1229.

Supplement 45 to E-1237.

Supplement 32 to E-1240.

Supplement 31 to E-1244.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47081

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

TUESDAY, the 14th day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published on sand and gravel from Mira to New Waterford, Nova Scotia, in Supplement No. 6 to Tariff C.R.C. No. 20; and the toll published in Tariff C.R.C. No. 39, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 6 to Tariff C.R.C. No. 20 and Tariff C.R.C. No. 39, approved herein, is $3\frac{3}{4}$ cents and $9\frac{1}{2}$ cents per 100 pounds respectively.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47107

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

TUESDAY, the 21st day of July, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.
J. A. STONEMAN, Commissioner.

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 28 to Tariff C.R.C. No. E-1234.
Supplement 31 to Tariff C.R.C. No. E-1246.
Supplement 27 to Tariff C.R.C. No. E-1255.
Supplement 12 to Tariff C.R.C. No. E-1256.
Supplement 13 to Tariff C.R.C. No. E-1258.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47108

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 21st day of July, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.
J. A. STONEMAN, Commissioner.

The Board orders:

1. That the tolls published in Supplement 16 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement 16 to Tariff C.R.C. No. E-4322, are as follows:—

From Group "D" to Copper Cliff, Ontario, 31 cents per 100 pounds.
To New York Central Railroad stations:—

From— Group—	Rates in cents per hundred pounds
A and B.. . . .	29
D, E, F, and G.. . . .	26 $\frac{1}{2}$
C.. . . .	28
J and K.. . . .	30
L.. . . .	31
Index 3000 to 3010.. . . .	28 $\frac{1}{2}$
Index 3015 to 3017.. . . .	28 $\frac{1}{2}$
Index 3011 to 3014.. . . .	26 $\frac{1}{2}$

S. J. McLEAN,
Assistant Chief Commissioner.



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Judgments, Orders, Regulations, and Rulings

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Application of the Canadian National Railways for suspension pending a hearing of Supplement No. 17 to Canadian Pacific Railway Tariff C.R.C. W-2902, containing joint rates on coal, carloads, from the Star Mining Company's mine at Rosedale and the J. D. Thomas Coal Company's mine at Drumbheller to local stations on the Canadian National Railways west of Port Arthur and Fort William.

File 27425.123.

JUDGMENT

BY THE BOARD:

Supplement No. 17 to Canadian Pacific Railway tariff C.R.C. No. W-2902, applying on coal shipped from stations in British Columbia and Alberta, was issued August 30, 1930, effective September 5, 1930, publishing, under authority of General Concurrence given by the Canadian National Railways, joint rates from (1) Star Mining Company's mine (at Rosedale, Alta.) and (2) the J. D. Thomas Coal Company's mine (at Drumbheller, Alta.) to local stations on the Canadian National Railways west of Port Arthur and Fort William. This tariff schedule established new joint rates from the two mines named. It did not replace a previous similar tariff. The schedule in question provides from the two mines named to local points on the Canadian National Railways, joint rates on the one line basis, or in other words, duplicates local rates published by the Canadian National Railways on the one line basis from Drumbheller to their local points.

On September 4 the Canadian National Railways made application for suspension of said supplement pending a hearing and an opportunity of presenting their objections to said supplement with a view to its disallowance. It was not felt that there was sufficient before the Board to justify issuance of an interim *ex parte* order before receiving the submissions of the Canadian Pacific Railway,

- (1) Route via Rosedale Transfer, Alta., and Canadian National Railways.
- (2) Route via Kneehill Transfer, Alta., and Canadian National Railways.

but after the latter had been received and considered, the Board, by Order No. 45550, dated October 8, 1930, suspended the said supplement as from its effective date pending a hearing which was held at Ottawa on March 26, 1931.

Briefly, the situation is that until recently the two mines named were on spur tracks served by the Canadian National Railways. This condition has been

changed and these mines' spur tracks are now connected with the Canadian Pacific Railway. In both instances the mine spurs are within four miles of the point of interchange with the Canadian National Railways.

In the application, the Canadian National Railways outlined their objection to the said supplement. They submitted first, that there was no necessity for publishing through rates as the mines are within the four-mile interswitching distance.

Second, that the said supplement does not in any way affect the shippers in so far as tolls or the operation of their mines are concerned.

Third, that said supplement was published because the Canadian Pacific Railway had made agreements with the mines to give them the equivalent to free switching on traffic to Canadian National Railways local stations.

Fourth, that if the Canadian National Railways concurred in the said supplement, they feared charges of discrimination from mines located exclusively on Canadian National Railways tracks who may request the same basis of switching from their mines on traffic destined to local points on the Canadian Pacific Railway.

Fifth, that the Board's order in the Western Rates Case established a basis of rates for one line, also two line movements; that the proposed rates constitute a joint movement on the one line basis and if the Canadian National Railways are a party to such basis, they fear charges of discrimination from mines located on the Canadian National Railways with respect to traffic destined to local Canadian Pacific Railway points.

The Canadian National Railways contend that if the Canadian Pacific Railway have made agreements with these mines to absorb a portion of the interswitching charge, they should not endeavour to accomplish this by making the Canadian National Railways a party to a through tariff and should find some other means of taking care of their agreements.

The Canadian Pacific Railway set out in considerable detail the circumstances leading up to the changed conditions under which these mines are now served exclusively by them, which it is not considered necessary to herein outline, except with respect to a brief reference to the agreement made between the Canadian Pacific Railway and the mines. The agreement between the Canadian Pacific Railway and the Star Mine provides:—

“The railway company further agrees, in order to preserve to the coal company the benefit and advantage it presently enjoys in common with all other coal operators in Drumheller field of direct access to rails of Canadian National Railways, to publish and maintain from time to time the same rates from the mine of the coal company to local points on Canadian National Railways in Western Canada, as shall contemporaneously be in effect from Rosedale station on the Canadian National Railways to such points.”

The agreement between the Canadian Pacific Railway and the Thomas mine provides:—

“It is further understood and agreed that, so far as interchange of shipments from or to the coal company's mines, or in, or so far as the Canadian National service to or from the mine property is concerned, the present interchange conditions which provide for movements of the coal company's shipments to or from the Canadian National Railways without extra switching charge, are to continue.”

The Canadian Pacific Railway stated that their officers were of the view that the method of tariff publication adopted in the said supplement against which complaint is made, was the best method of taking care of the situation and carrying out their agreements with the Star and Thomas mines. The

position of the Canadian National Railways is that this should be accomplished in some other manner than by the publication of a joint tariff constructed on the basis above set out and to which they have been made an unwilling participant.

Upon consideration of the written submissions and what was adduced at the hearing, the Board considers that the supplement complained against should be disallowed; that as line haul carrier, the Canadian National Railways should make absorption of interswitching in accordance with the provisions of the Board's General Order No. 252, dated 26th of October, 1918, and tariffs issued pursuant thereto; that if, in fulfilment of its agreement, the Canadian Pacific Railway absorb a portion of their published interswitching toll, such absorption is to be provided for by an appropriate provision therefor in its tariff, such absorption provision by the Canadian Pacific Railway not to affect or reduce the amount of absorption made by the line haul carrier under the general interswitching regulations.

OTTAWA, July 14, 1931.

Complaint of the Ontario Paper Company, Ltd., Thorold, Ont., against the Board's Order No. 46167, dated January 22, 1931, removing the suspension provided for by the Board's Order No. 42931, dated July 8, 1929, so far as it applied to item No. 40-A in Supplement No. 1 to C.N.R. Tariff No. E-1403, increasing the rates on newsprint paper, in carloads, from Thorold, Ont., to Chicago, Ill., and against Supplement No. 12 to C.N.R. Tariff C.R.C. No. E-1403

and

Application of the Ontario Paper Company, Ltd., Chicago, Ill. (Thorold, Ont.), for an interim order suspending Order of the Board No. 46167, dated January 22, 1931, and the Supplements complained of.

File 24602.14.3

JUDGMENT

BY THE BOARD:

In tariffs filed to be effective August 1, 1929, the railway companies proposed a general increase in the rates on newsprint paper, carloads, from Canadian shipping points to United States destinations. These tariffs were suspended by Order No. 42931 dated July 8, 1929, and Order No. 43038, dated July 23, 1929. Subsequently, hearings and argument took place before the Board, at which all interested parties were represented, which concluded on November 28, 1930. On January 6, 1931, the Canadian National Railways made application for the amendment of Order No. 42931 in so far as it suspended the tariff item covering the rate from Thorold to Chicago, requesting that this rate be considered on the record before the Board in the General Newsprint Case. Written submission in reply to this application was filed by counsel representing the Ontario Paper Company and the Tribune Company of Chicago, respectively consignor and consignee of newsprint from Thorold to Chicago. The entire output of the Thorold plant is shipped to the Tribune Company at Chicago. The matter was considered at a meeting of the Board on January 20, 1931, the minutes of Board meeting setting out its decision as follows:—

“Application of the Canadian National Railways, for amendment to Order of the Board No. 42931, dated July 8, 1929, in so far as it suspends item 40-A of Supplement No. 1 to Tariff C.R.C. No. E-1403.

“Minutes of the Board, held January 20, 1931.

Decision:

“The Canadian National Railways application for amendment to Order No. 42931, dated July 8, 1929, in so far as it applies to item 40-A

of Supplement No. 1 to Tariff No. C.R.C. E-1403 thereof is allowed, on the ground that this is a special rate arrived at by agreement between the shippers and the carriers, and it appears that the shippers have not fulfilled their obligation of shipping by rail during the summer season; and also on the ground that this rate was held down by water competition and it was optional for the carriers to publish and maintain the same. This rate is in a class by itself and can be dealt with independently of the General Enquiry of International through rates on newsprint paper.

"The Board directed that its decision go in the form of an order which will be sent out to all interested parties with a covering letter in terms of the above."

Thereafter, Order No. 46167 issued dated January 22, 1931, removing the suspension directed by Order No. 42931, in so far as it applied to the tariff item applying on newsprint paper, carloads, from Thorold to Chicago. Following issuance of Order No. 46167, telegrams and letters were received from the Ontario Paper Company and on March 30, 1931, counsel for the paper company filed formal complaint and application, alleging, amongst other things, that other considerations than as set out in the Board's decision influenced the establishment of the rate in question; that the evidence and argument in the General Newsprint Case related to the proposed rate from Thorold in relation to the proposed rates from other Canadian points and not to the relationship as between these points under the existing rates, or as to the reasonableness *per se* of the then existing rate from Thorold to Chicago. Complainant requested a hearing before the Board to afford full opportunity to develop the submissions and present evidence and argument in support of its allegations, also requesting that Order No. 46167 and the tariff schedule issued pursuant to said order be suspended until further order by the Board. The Board received reply from the Canadian National Railways and answer thereto by complainant, and the matter was heard at sittings of the Board in Ottawa on July 6 and 7, 1931.

Shipments of newsprint from the Thorold plant commenced in September, 1913, and the rates from Thorold to Chicago, as shown in exhibit filed by complainant, have been as follows:—

Date Effective	Rate cents
September 6, 1913.	15
November 16, 1914.	15.8
November 29, 1917.	17½
June 25, 1918.	22
August 26, 1920.	31
January 24, 1921.	30
May 16, 1922.	25
July 1, 1922.	25
March 1, 1927.	22½
June 10, 1927.	22½

In the Official Classification applying from Canadian points to Official Classification territory, newsprint is rated 5th class, but my published exceptions thereto, the 6th class rates are authorized and the effect of Order No. 46167 was to enable the railway companies to establish the 6th class rate of 27½ cents on newsprint, carloads, from Thorold to Chicago.

Complainant states that at various times it sought the establishment of a commodity rate lower than the 6th class rate, but was unsuccessful in this, and from 1913 to 1922 the 6th class rate applied. Under the general increases authorized, this rate had in 1922 become 30 cents. In that year complainant made arrangements to ship newsprint by boat from Thorold to Chicago during the season of navigation and owing to this threatened loss of traffic to the railway company, conferences took place between representatives of the carrier and the complainant, resulting in the establishment on May 16, 1922, of a rate of

25 cents, a reduction of 5 cents, in consideration of which the complainant agreed to cancel its boat contracts and ship its newsprint by rail. This 25 cent rate was, therefore, established as a competitive rate to meet water competition. The Board has always held, and repeatedly stated, that a railway company may, in its discretion, establish reduced rates to meet competition. That while it has a right to establish competitive rates, the Board does not direct their establishment as a matter of compulsion nor prohibit the cancellation of such rates if the carrier desires to withdraw same. Further, such subnormal competitive rates are not the measure of the reasonableness of normal rates *per se*.

The 25 cent rate was superseded, effective March 1, 1927, by a rate of 22½ cents and the parties are in disagreement concerning the reason for and basis of this rate. Complainant alleges that when the 25 cent rate was negotiated, they were aware of an impending possible reduction in rates and had an understanding that in such event such reduction should apply to the 25 cent rate. On July 1, 1922, there was a 10 per cent reduction in rates prescribed by the Interstate Commerce Commission for application within the United States and which was also applied to international rates between Canada and the United States. This decision did not require such reduction to be applied where, as in this instance, the rate had already been reduced to a greater extent than 10 per cent below the rate in effect immediately prior to August 26, 1920, when a 40 per cent increase was authorized. A 10 per cent reduction in the 25 cent rate produces 22½ cents. The railway company refused to make this reduction and the matter was the subject of correspondence and discussions between the complainant and the railway company between 1922 and 1927. The complainant filed a complaint concerning the Thorold-Chicago rate with the Interstate Commerce Commission which was heard in 1926, and alleges that the 22½ cent rate was established by the railway to secure the withdrawal of this complaint before the Interstate Commerce Commission and was also recognized as a reasonable rate *per se*. On this point the parties are in entire disagreement. The railway company alleges that the 10 per cent reduction was finally made to carry out the understanding the complainant alleged to have had with their representative who negotiated the 25 cent rate and which they had previously declined to do. If the rate of 22½ cents had been established immediately following the 10 per cent reduction in 1922, it would clearly have been a reduction in, and related to, the competitive rate of 25 cents and therefore, in the same category. The normal rate having been 30 cents and the competitive rate 25 cents, and there having been no change in the general rate level between 1922 and 1927, we are not prepared to decide on the record before us in this case that the 22½ cent rate, 2½ cents below the admittedly competitive rate, should be held by us as being a normal or reasonable maximum rate *per se*. In this connection it may be pointed out that in 1919, at which time the 6th class rate was 22 cents and prior to the increase made on August 26, 1920, the Ontario Paper Company made complaint to the Board pointing out, as in this case, that while the 6th class rate applied from Thorold, all other Canadian newsprint manufacturing points had specific commodity rates to Chicago below the 6th class rate. That complaint was dismissed by order of the Board No. 28518 dated July 11, 1919, for the reasons set out in the judgment of the board dated June 26, 1919. The present situation is that with the application of the 6th class rate of 27½ cents the rate of 22 cents as existing in 1919 has not been subjected to any greater percentage of increase than the commodity rates on newsprint from other Canadian shipping points in the Eastern Canadian Blanket Group to Chicago, except in the case of Espanola, which rate was modified under the circumstances that are set out in the record.

With regard to the application of the 6th class rate from Thorold, while from other Canadian shipping points commodity rates lower than 6th class apply, this does not prove unreasonableness or unjust discrimination with respect

to the Thorold rate because the class rates are not constructed on the same basis from the points given commodity rates. There is a limited territory Toronto and west and south of the old Grand Trunk Main Line Sarnia to Toronto, from which the class rates to Central Freight Association territory are based on the so-called Disque "B" Scale, while from the other territory the class rates are constructed on a substantially higher basis. Thorold, therefore, is not only located in the lowest rated territory, but, in fact, to Chicago the class rates from Thorold are lower than the Disque "B" Scale, as they are held down by the rates from Buffalo as maximum. In the establishment of commodity rates, especially where a large territory is included in the same rate group, there is frequently little regard to any particular relationship to the class rates. The spread between Thorold and points in the Eastern Blanket Group in 1919 was $7\frac{1}{2}$ cents, namely, 22 cents from Thorold and $29\frac{1}{2}$ cents from the Eastern Group. At present the spread is 11 cents, namely, $27\frac{1}{2}$ cents from Thorold as compared with $38\frac{1}{2}$ cents from the Eastern Group.

We have carefully considered the many rate comparisons filed by the complainant in support of its allegation that the $22\frac{1}{2}$ cent rate is reasonable per se, as well as what was stated in evidence and agreement by witnesses and counsel for complainant. Similar consideration has been given to the numerous rate comparisons and evidence and argument by the railway company in support of its contention that the $27\frac{1}{2}$ cent rate is not unreasonable per se, or unjustly discriminatory against Thorold.

Upon consideration of all the facts, we find that the $27\frac{1}{2}$ cent rate is not unreasonable, or unjustly discriminatory. The complaint and application will be dismissed.

OTTAWA, July 23, 1931.

Application for a Ruling of the Board as to the Legal Freight Rate on Coal, Carloads, from Montreal Wharf (Section 46) to National Cement Company, on and After March 26, 1928, and Prior to October 14, 1929.

File No. 27425.124

RULING

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

This is an application made by Mr. J. F. Hamilton, Traffic Manager, National Cement Company, Montreal, for a ruling, or declaration by the Board as to the legal rate on coal, in carloads, from Montreal wharf (section 46—Interchange with Montreal Harbour Commissioners' Railroad) to the National Cement Company, Montreal East, during the period from March 26, 1928, to October 14, 1929.

The rates involved are published by the Canadian National Railways in a special Freight Tariff, C.R.C. No. E-875, which covers various switching services.

On the exhibits as filed, some 1,437 cars of coal are affected. The rate as charged by the Canadian National Railways was $2\frac{1}{2}$ cents per 100 pounds. It is claimed that the charge which should have been made is \$10.50 per car. In substance, then, it is claimed that the total charge amounted to \$41,001.01; that these charges should have been \$20,101.50; and that the same amounts to an overcharge of \$20,899.51. The matter is complicated by the fact that the tariffs provide, as indicated below, for carload rates, as well as for rates per 100 pounds.

Effective May 11, 1926, by item 1074D, provision was made for a rate on carload freight of \$10 per car. This applied, *inter alia*, between the Canada Cement Company's Plant No. 1, Kilburn Siding, and Hochelaga, for furtherance via Canadian Pacific Railway, Montreal wharf (section 46). This did not cover the movement from Montreal wharf (section 46) to the National Cement Company.

By item 1097 of August 4, 1926, provision was made for a rate of $2\frac{1}{2}$ cents per 100 pounds on coal from Montreal wharf (section 46) to the National Cement Company, Montreal East.

Item 1074E of March 26, 1928, provided a rate on carload freight of \$11 per car. This was effective, *inter alia*, between Canada Cement Company's Plant No. 1, Kilburn Siding, and Hochelaga, for furtherance via Canadian Pacific Railway, Montreal wharf (section 46). The rate of \$10 per car which was effective May 11, 1926, was specifically cancelled by item 1074E, which became effective March 26, 1928. A higher rate, viz., \$11, being substituted.

Effective May 14, 1928, the rate of \$11, which was effective March 26, 1928, was cancelled, and a rate of \$10.50 on carload freight was substituted. This was applied to the same points as were covered by item 1074E of March 26, 1928.

Effective August 10, 1929, by item 1097A, a rate of $2\frac{1}{2}$ cents per 100 pounds on coal was provided for. This cancelled the tariff item of August 4, 1926. The operative points were the same under this tariff of August 10, 1929, as under the tariff of August 4, 1926. There had originally been provision for a 50,000-pound minimum. The tariff of August 10, 1929, provided on traffic ex Montreal Harbour Commissioners' Railway a minimum weight of 80,000 pounds, except when cars were loaded to their full cubical capacity and would not contain this minimum. Under such circumstances the actual weight was to apply.

By tariff item 1097B, effective August 31, 1929, item 1097A, effective August 10, 1929, was cancelled. The rate of $2\frac{1}{2}$ cents per 100 pounds on coal continued. The same provision as to minimum also applied as in the item effective August 10, 1929, the only change of moment being an addition to the list of destination points.

By item 1074G, effective as to increase October 14, 1929, and as to other changes September 17, 1929, the tariff item 1074F of May 14, 1928, was cancelled. Under this tariff item, No. 1074G, the rate on carload freight per car was continued at \$10.50. Under this, the rates between the National Cement Company, Pointe aux Trembles and Hochelaga (for furtherance via Canadian Pacific Railway) and Montreal wharf (section 46); interchange with Montreal Harbour Commissioners' Railway, were cancelled. The other initial and destination points of the movement covered by the \$10.50 rate remained the same as in item 1074F, which was effective May 14, 1928.

As has been pointed out, rates are quoted on carload freight. Rates are also quoted in the case of coal on the basis of a specific number of cents per 100 pounds. The continuance of these two bases throughout the period referred to, in which the tariff items in question remained applicable, so far as the tariff statement is concerned, would seem to imply the intent that both should continue operative.

While the Board's records do not disclose any Canadian authorities bearing on the matter, there are decisions of the Interstate Commerce Commission which are of value in this regard. That body has ruled that if the rates were established on different dates in the same tariff, the rate first established is the applicable rate. *Jewel Tea Co'y vs. Pennsylvania Railroad*, 46 I.C.C., 314. Reference may also be made to the *New Albany Box and Basket Co'y vs. Illinois Central Railroad*, 16 I.C.C., 315; *Sun Co'y vs. T. & O.C. Ry. Co.*, 52 I.C.C., 12; *Dewey Portland Cement Co'y. vs. A.T. & St. F. Ry. Co.*, 56 I.C.C., 444; *Iliff Bruff Chemical Co. vs. Director General*, 60 I.C.C., 720.

In the present situation, as pointed out above, the first rate, in point of time to cover the movement from Montreal wharf to the plant of the National Cement Company, Montreal East, was that of $2\frac{1}{2}$ cents per 100 pounds, made effective by item 1097 of August 4, 1926. The carload rate of \$10 which is referred to, while it became effective May 11, 1926, item 1074 did not cover the movement from Montreal wharf (section 46) to the plant of the National Cement Company.

The tariffs differentiate between carload freight and coal loaded to specific minimum weights. The tariff concerned with coal was specifically limited to that traffic. The tariffs concerned with carload freight did not exclude the coal traffic and, therefore, were broad enough to embrace all of the traffic in question.

Is it legal to hold that the specific tariff provision in respect of coal constitutes a specific exception to the general provisions carried in regard to carload freight?

The two bases of rates which appear throughout in the tariff history as summarized, show an intention to continue these. Before a conflict in rates could, under the circumstances set out, be found to exist, it would have to be clear that the items are co-extensive; that is, they are both applicable to the same traffic, and that one cannot reasonably be construed as an exception to the other. The specific tariff provision in respect of coal constitutes an exception to the general provision in respect of carload freight. There is, therefore, not such conflict as would justify the conclusion that the rate of $2\frac{1}{2}$ cents per 100 pounds on coal was not, in the tariffs concerned, the legal rate on that commodity.

July 23, 1931.

Commissioners Norris and Stoneman concurred.

ORDER No. 47173

In the matter of the application of the National Cement Company, Montreal, Quebec, hereinafter called the "Applicant Company," for a ruling or declaration by the Board as to the legal rate on coal in carloads from Montreal Wharf (Section 46—interchange with the Montreal Harbour Commissioners' Railway) to the National Cement Company, Montreal East, during the period from March 26, 1928, to October 14, 1929.

File No. 27425.124

FRIDAY, the 7th day of August, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, March 10, 1931, in the presence of counsel for the applicant company and the railway company, and what was alleged,—

The Board declares: That, under the provisions of Canadian National Railways' Tariff C.R.C. No. E-875, and Supplements thereto, the legal rate on coal, in carloads, from Montreal wharf (section 46—interchange with the Montreal Harbour Commissioners' Railway) to the National Cement Company, Montreal East, during the period from March 26, 1928, to October 14, 1929, was $2\frac{1}{2}$ cents per 100 pounds; subject to minimum weight of 50,000 pounds, during the period from March 26, 1928, to August 9, 1929, and for the period August 10, 1929, to October 14, 1929, minimum weight of 80,000 pounds, except that when cars were loaded to their full cubical capacity and would not contain such minimum the actual weight applied.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the J. H. Ashdown Hardware Company, Limited, Winnipeg, Man., for a ruling of the Board with regard to the classification rating applying on returned empty hardware boxes.

File No. 33365.85.8.

RULING

BY THE BOARD:

Applicant submits expense bill covering a shipment made on March 19, 1931, from Gladstone, Man., to Winnipeg over the Canadian Pacific Railway, weighing 1,630 pounds and described therein as empty boxes. The applicant's description is returned empty hardware boxes, from which it is inferred these boxes were shipped out containing hardware and returned empty. While not specifically stated, the classification items referred to indicate that they are wooden boxes. Rating at first class has been charged and rating of third class is claimed by applicant as applying.

Item 200-B, Supplement 16 to Canadian Pacific Railway Tariff C.R.C. No. W-2931, provides that on empty carriers (second-hand, returned) from various stations to distributing centre, the outbound rates will apply. From the origin stations named to the distributing centres enumerated, standard mileage class rates apply, while from the distributing centres to said stations so-called distributing rates lower than the standard mileage rates govern, so that what is meant by the term "outbound rates" and the tariff provision in question is that the distributing rates apply in the reverse direction with respect to these articles. Determination of the outbound rate applying on returned empty wooden hardware boxes from Winnipeg to Gladstone decides the proper rate applicable on this shipment.

For many years prior to 1915, the classification description for returned empties was very general, reading:—

L.C.L.

Empties, returned, exclusive of baskets, crates and chicken coops, (except as noted below), from original consignee to original shipper, and by same line over which originally shipped, every package to be fully marked or addressed:—

Any quantity, prepaid. 4

Carloads of returned empties subject to ratings on new packages as maximum.

NOTE.—Crates, K.D. in bundles, or folded flat, and iron banna crates, O.R.B. may be accepted as "Returned Empties."

Empties not fully marked or addressed NOT TAKEN.

Effective January 2, 1915, in Supplement No. 4 to Classification No. 16, the provision for these articles was materially changed. A heading was provided, reading:—

"Carriers, Second-hand, Empty, Returned, Prepaid, Subject to Rule 22,"

and under this heading the various containers that would be carried thereunder and the ratings applying thereon were enumerated. The carriers set out in submitting the supplement to the Board for approval that there had been more or less controversy as to just what returned empties were entitled to 4th class ratings provided in the Classification then existing, and for this reason they were providing a specific list of articles which were being transported as "returned empties" and also showing a specific rating for each article. The classification has since continued in this form subject to modifications in ratings and the addition of certain containers. Clearly, therefore, this heading applies only on the articles specifically described thereunder.

Applicant refers to items 27 and 28 under this heading, reading:—

CARRIERS, SECOND HAND, EMPTY, RETURNED, PREPAID, SUBJECT TO RULE 32

Item No.

27 Boxes or cases, wooden:

28 Beer, biscuit, bread, butter, catsup, confectionery, cracker, egg, fish, jam or jelly, mineral water or pickle.

L.C.L.

While hardware boxes are not named in the above items, applicant claims application of such items thereto because they are analogous, invoking, apparently, the application of Rule 21 of the Classification reading:—

“When articles which are not classified are offered for transportation, agents will bill same at the ratings provided for analogous articles, notation to that effect to be made on waybills, and will at once make full report to their General Freight Department, in order that specific Classification may be provided therefor.”

Chairman Ransom of the Canadian Freight Association in his submission, copy of which was forwarded to applicant, states:—

“These so-called hardware boxes, we understand, are wooden boxes which are clearly covered by item 16, page 63 of Classification No. 18, C.R.C. No. 427, reading as follows: Wooden boxes, N.O.I.B.N. Rule 21 of the Classification only applies on articles offered for transportation that are not classified in our Classification. We have shown herein that the boxes of the complainant are classified, consequently the rule of analogy cannot be applied.”

We are constrained to agree that the foregoing citation outlines the correct interpretation of the Classification therefore rating of third class does not apply on the second-hand empty returned hardware boxes if shipped from Winnipeg to Gladstone or in the reverse direction. Where an article is not classified specially under a heading, although analogous to an article included under such heading, the provisions of Rule 21 are inapplicable so far as providing for the inclusion of such article under the heading in question if the article is specifically classified in some other portion of the Classification.

It is not indicated whether this was a sporadic shipment; if not, on such information as is here on record we are of the opinion that provision should be made under the heading of Returned Empty Second-hand Carriers for these boxes and if applicant is unsuccessful in an application to the Classification Committee for such provision, the matter may be referred to the Board. The application as here presented to the Board, however, did not embrace the question of rating on future shipments.

OTTAWA, July 30, 1931.

ORDER No. 47123

In the matter of the Order of the Board No. 46459, dated March 20, 1931, dismissing the application of the Nipissing Central Railway Company for an Order directing J. R. Booth Limited to restore the natural conditions disturbed at the height of land south of Lake Dasserat;

And in the matter of the application of the Nipissing Central Railway Company for leave to appeal to the Supreme Court of Canada from the said Order No. 46459.

File No. 11014.36

THURSDAY, the 23rd day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, June 19, 1931, in the presence of counsel for the railway company, J. R. Booth Limited, the Department of Lands and Forests of the Province of Ontario, and the Department of Lands and Forests of the Province of Quebec, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47121

In the matter of special tariffs on grain and grain products from Ontario points to the Atlantic Seaboard and St. Lawrence River ports for Export.

File No. 27612.56

WEDNESDAY, the 29th day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas it is represented that the Interstate Commerce Commission in Docket 17000, Part 7, has directed the filing of reduced rates on grain and grain products from United States shipping points to the Atlantic seaboard for export, effective August 1, 1931;

And whereas the Canadian lines have made application for authority to publish reduced rates on the same commodities from Ontario points to the Atlantic seaboard and St. Lawrence river ports for export on less than statutory notice to meet the reduction made by the United States are aforesaid,—

The Board orders: That the Canadian carriers may publish on one day's notice, tariffs containing reduced rates on the aforesaid commodities from Ontario shipping points to the Atlantic seaboard and St. Lawrence river ports for export, to meet the reduction made by the United States lines.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47133

In the matter of the Order of the Board No. 27546, dated August 2, 1918, directing the Canadian Pacific Railway Company, hereinafter called the "Railway Company," to re-establish the local train service between Tweed and Toronto, such service to be provided each year from the 15th day of April to the 1st day of December;

And the application of the Railway Company for an Order authorizing the discontinuance of trains Nos. 601 and 602 between Tweed and Havelock, Ontario, as prescribed by the said Order.

File No. 27563.67

SATURDAY, the 25th day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Tweed, July 10, 1931, in the presence of counsel for and representatives of the railway company, the town of Tweed, the Tweed Board of Trade, F. D. Corcoran, Dr. Bowlley, and S. B. Rowland appearing in person, and what was alleged; and upon reading the report of the Chief Operating Officer of the Board, the statement of figures filed by the railway company showing substantial losses under the present operation,—

It is ordered: That the railway company be, and it is hereby, authorized to discontinue the operation of trains between Havelock and Tweed, as pre-

scribed by the said Order No. 27546, dated August 2, 1918, subject to provisions being made to stop its night Toronto-Ottawa passenger trains to allow passengers to entrain and detrain at Ivanhoe and Bonar Law.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47134

In the matter of the application of the Thousand Islands Railway Company, hereinafter called the "Applicant Company," under Sections 122 and 323 of the Railway Act, for approval of By-law dated the 21st of July, 1931, passed by the Directors of the Applicant Company, authorizing the General Manager and the General Superintendent of the Company to prepare and issue tariffs of tolls to be charged for all traffic carried by the Applicant Company, on file with the Board under file No. 1310.

THURSDAY, the 30th day of July, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.
Hon. T. C. NORRIS, Commissioner.

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law, dated July 21, 1931, on file with the Board under file No. 1310, be, and it is hereby, approved; and that Order No. 24205, dated September 21, 1915, made herein, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47135

In the matter of the application of the Oshawa Railway Company, hereinafter called the "Applicant Company," under Sections 122 and 323 of the Railway Act, for approval of By-law No. 16, dated July 21, 1931, passed by the Board of Directors of the Applicant Company, authorizing the General Manager and the General Superintendent of the Company to prepare and issue tariffs of tolls to be charged for all traffic carried by the Applicant Company, on file with the Board under file No. 1319.

THURSDAY, the 30th day of July, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.
Hon. T. C. NORRIS, Commissioner.

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law, dated July 21, 1931, on file with the Board under file No. 1319, be, and it is hereby, approved; and that Order No. 24197, dated September 21, 1915, made herein, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47136

In the matter of the application of the Montreal and Southern Counties Railway Company, hereinafter called the "Applicant Company," under Sections 122 and 323 of the Railway Act, for approval of By-law, dated the 21st of July, 1931, passed by the Directors of the Applicant Company, authorizing the General Manager and the General Superintendent of the Company to prepare and issue tariffs of tolls to be charged for all traffic carried by the Applicant Company, on file with the Board under file No. 12255.

THURSDAY, the 30th day of July, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law, dated July 21, 1931, on file with the Board under file No. 12255, be, and it is hereby, approved; and that Order No. 8486, dated October 19, 1909, made herein, be rescinded.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 47139

In the matter of rates on grain and grain products from Canadian Bay Ports to Montreal, Quebec, and the Atlantic Seaboard for export.

File No. 27612.56.

SATURDAY, the 1st Day of August, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that the railways in the United States have reduced the "At and East" rates on grain and grain products from Buffalo to United States Atlantic ports for export, effective August 3, 1931, and it being desirable that railways in Canada be permitted to make similar reductions from Canadian Bay ports—

The Board Orders: That the Canadian carriers be, and they are hereby permitted to publish tariffs, effective August 3, 1931, containing reduced rates on grain and grain products from Canadian bay ports to Montreal, Quebec, and the Atlantic seaboard for export to meet the reduction made by the United States lines.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47168

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 7th day of August, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 47 to Tariff C.R.C. No. E-1235.

Supplement 46 to Tariff C.R.C. No. E-1237.

Supplement 33 to Tariff C.R.C. No. E-1240.

Supplement 12 to Tariff C.R.C. No. E-1241.

Supplement 32 to Tariff C.R.C. No. E-1246.

Supplement 3 to Tariff C.R.C. No. E-1671.

S. J. McLEAN,

Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF MAY, 1931

Railway accidents170, involving 13 persons killed and 173 injured.
Railway accidents at highway crossings.... 22, involving 6 persons killed and 34 injured.

	Killed.	Injured.
Passengers..	—	24
Employees..	2	125
Others..	17	58
	<u>19</u>	<u>207</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

PRINCE EDWARD ISLAND

- 1 Automobile—P.E.I. licence 2142.

PROVINCE OF NOVA SCOTIA

- 1 Automobile—N.S. licence 31-830.

PROVINCE OF QUEBEC

- 3 Automobile—Failed to stop for crossing. Que. licences 80874, F-17851; N.Y. licence N.Y.-9-F-71.
1 Automobile—Ran into side of train. Que. licence F-1682.

PROVINCE OF ONTARIO

- 1 Automobile—Ran into side of train. Ont. licence LB-176.
2 Automobile—Excessive speed of auto. Ont. licences OD-789, T-2837.
1 Automobile—Stalled on crossing. Ont. licence LH-940.
6 Automobile—Ont. licences V-2320, LK-248, MF-654, MR-23, NW-312, BA-406.
1 Horse-drawn vehicle.

PROVINCE OF SASKATCHEWAN

- 1 Automobile—Sask. licence 1318.

PROVINCE OF ALBERTA

- 1 Automobile—Alta. licence TB-3063.

PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—Ran into side of train. B.C. licence 12-082.
1 Automobile—Washington licence 231-214.
1 Pedestrian.

Of the twenty-two accidents at highway crossings, eight occurred at protected crossings and fourteen at unprotected crossings. Twelve of the accidents occurred during daylight hours and ten at night.

OTTAWA, July 31, 1931.

The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the second part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the third part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the fourth part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the fifth part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the sixth part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the seventh part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the eighth part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the ninth part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

In the tenth part of the paper the problem of the existence of solutions of the system (1) for arbitrary values of the parameters α and β is solved. It is shown that the system (1) has solutions for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of other Vehicles, and of Pedestrians at Protected Railway Crossings.

Files Nos. 45.8.1; 45.8.2; 45.8.3

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from April 1, 1931, to July 31, 1931, show forty-one cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from January 1, 1931, to June 30, 1931, and (Eastern Lines) from February 1, 1931, to July 31, 1931, show a total of one hundred and seventeen cases.

The Toronto, Hamilton and Buffalo lines from April 1, 1931, to July 31, 1931, show a total of four cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
April 10....	3.45 p.m....	Charlotte St., Peterboro, Ont.	X.X. 402 (1930)	Approached crossing at fast rate of speed, when roads were greasy.
" 16....	16.00 K....	Victoria Ave. and Ninth Street, Brandon, Man.	110-621.....	Ignored stop signal. Engineer had to make emergency stop to avoid hitting auto truck.
" 20....	3.47 p.m....	Cataragui W. of Kingston, Kingston, Ont.	CO-816.....	Auto crossed over highway crossing in front of work train Extra 3293. All warning signals given by engineer.
" 20....	7.44 a.m....	6th Concession, St. Louis, Que.	H-13654.....	Driver of automobile failed to make stop at crossing but crossed track directly ahead of train. Crossing protected by ordinary sign posts.
" 21....	23.25.....	Dawson Road, Winnipeg, Man.	20-270.....	Ran into side of train being switched over Dawson Road Crossing.
" 27....	9.15 p.m....	Devonshire Rd., Walkerville, Ont.	254085.....	Driver claimed did not see gate or red light.
" 27....	14.35 K....	Main road crossing just west of passing track Marengo, Alberta.	.....	Driver attempted to take his team across track. Hit by train. No one injured.
May 5....	16.00.....	Kenny Street, Winnipeg, Man.	102239.....	Ran into side of cars that were being switched over Kenny Street.
" 5....	17.50 K....	13th Avenue, Regina, Sask.	T-1712.....	Drove on crossing in front of train and was struck. Driver admitted he did not look to see if train was approaching.
" 7....	1.05 K....	96th Street, Edmonton, Alta.	82-008.....	Nearly hit switchman on side of box car being moved over street. To avoid striking him, autoist swung over sidewalk into gravel, having to be assisted by switch crew to get out.
" 8....	2.20 a.m....	Quadra St. crossing, Patricia Bay Sub. Victoria, B.C.	B.C. 12062.....	Not proceeding with caution when in vicinity railway crossing.
" 8....	12.10 K....	7th Avenue, Regina, Sask.	40292.....	Disregarded wigwag signal and crossing bell also whistle and bell of engine attempting to cross in front of train. Train struck car.
" 12....	10.25 p.m....	2nd crossing East of Joliette Grand Mere sub. division, Montreal, Que.	F. 16821, Que...	Auto truck apparently did not stop before going over crossing. Brakes failed.
" 20....	1.35.....	24th St., Saskatoon, Sask.	2874.....	Disregard of watchman's stop signal whilst switch engine occupied crossing.
" 23....	6.00 p.m....	Perth St., Brockville, Ont.	CA-842.....	Both gates down, ran through breaking end of south gate.
" 23....	12.10 a.m....	Charlotte St., Peterboro, Ont.	EE-32.....	Driver should have approached crossing very carefully on account of the condition of the roads.
" 23....	21.45 K....	Oak Point Sub. Winnipeg, Man.	17-719.....	Collided with engine 7303 while approaching bridge over Assiniboine River at Westside.
" 30....	9.30 p.m....	Perth St., Brockville, Ont.	CB-211.....	Reckless driving running without lights. South gate down, north being lowered, ran under north gate. Broke the lamp carrier and bent lamp.
June 5....	10.15 a.m....	Main St., Jarvis, Ont.	NM-524.....	Car went through one of crossing gates, broke end off gates.
" 8....	16.25 K....	Broadway Crossing, Yorkton, Sask.	Sask. 6212.....	Failed to stop at crossing protected by "stop" sign and ran into side of train.
" 10....	20.30.....	MP 68-5 Miniota Melville, Sask.	40296.....	Attempting to back car across railway track and went off roadway at culvert.
" 12....	10.30 a.m....	Osler Crossing, South Parry, Ont.	52-6190.....	Neglecting to have his car under proper control to prevent running into side of engine.
" 13....	3.34 p.m....	Ontario St., Port Hope, Ont.	24-853.....	Parked in front of Ontario House, foul of Main Track 95, had to stop till track got clear.
" 16....	7.35 a.m....	King Street, Trenton, Ont.	DN-956.....	Drove into westerly gates breaking 12 feet off one arm.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
June 16....	1.04 p.m...	Ontario St., Port Hope, Ont.	E-5684.....	Auto parked too close to Track 92 had to stop till auto was pushed out of way.
" 17....	7.05 K.....	On crossing just east of Irrigation bridge, Calgary Yard, Calgary, Alberta.	7100.....	Car being towed by another, Broatch attempted to get it across in front of engine but was struck.
" 18....	10.40K.....	96th Street, Edmonton, Alberta.	.....	Drove across in front of engine, nearly running over switchman.
" 30....	14.45.....	Water St. crossing, Winnipeg, Manitoba.	16-522.....	Ran through red stop signal in front of engine.
July 3....	5.21 p.m...	Cadillac St., Montreal East.	48910 Quebec...	Failed to come to a stop before passing over unprotected crossing.
" 4....	16.10.....	Sixth Street, Brandon, Manitoba.	43-946.....	Ignored stop signal.
" 5....	11.55 p.m...	Public Crossing, Edson, Alta.	1689.....	
" 9....	9.40 a.m...	Front Street, Orillia, Ont.	AH-17.....	Drove through gates while down to allow train to proceed over crossing.
" 11....	.....	First Public Crossing north of Station, Everett, Ont.	35089C.....	Ran into engine 593 of train 391 due to failure of truck driver to notice train until too close.
" 15....	8.45.....	Highway crossing, 82-3 Blackfoot Sub-division, Lloydminster, Sask.	.....	Drove auto across track in front of train.
" 16....	10.30 a.m...	Victoria Pk. Ave., Toronto, Ontario.	A-5912.....	Disregarded stop signal. Reckless driving.
" 18....	1855K.....	Crossing west of west switch, Marengo, Sask.	.....	Drove too near the track resulting in Extra East 2696 striking the car breaking bumper, a headlight and bending fenders. No one injured.
" 22....	9.50.....	6th Street, Brandon, Manitoba.	45-245.....	Ignored stop signal. Engine was almost at crossing.
" 24....	10.35 p.m...	Front Street, Orillia, Ont.	6225-2-C.....	Driver claimed motor was steaming and did not see gates were down.
" 25....	11.15.....	Highway Crossing, Vermilion Yard, Vermilion, Alberta.	.....	Attempted to drive over crossing which was partly blocked. Engine backed up and wagon was struck.
" 25....	18.00.....	Private Crossing, Viking Sub., Clover Bar, Alberta.	.....	Hauling gang plow across track with tractor in front of approaching train. Plow struck by train.
" 31....	1.30 p.m...	Ontario St., Port Hope, Ont.	21-117C.....	Was parked on track on Ontario St. Men had to stop till truck got clear.

CANADIAN PACIFIC RAILWAY—EASTERN LINES

NEW BRUNSWICK DISTRICT

Mar. 1....	.....	Douglas Ave. M. 1-8 St. John, S.D.	N.B. 7427.....	Auto dashed under gates while same were being lowered for gate lights.
April 4....	4.20 p.m...	" "	.....	Motorcycle drove under gates while they were being lowered for train No. 105.
" 15....	.....	" "	.....	Truck drove over crossing at a very high rate of speed.
" 17....	.....	" "	.....	Sedan automobile drove under gates while same were in downward movement for engine.
" 7....	6.45 p.m...	Fairville Crossing, St. John, S.D.	.....	Gates were being lowered when truck struck west gate of crossing breaking it.
" 12....	11.30 a.m...	" "	.....	Gates were being lowered for engine to go to Bay Shore when auto drove through gate and broke tip off north gate on east side of crossing.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Continued*

NEW BRUNSWICK DISTRICT

Date	Time	Crossing	Auto No.	Dangerous Practice
May 19....		Douglas Ave., crossing Saint John.	N.B. J-6209....	Automobile went over crossing while gates were being lowered for engine 2621.
" 22....		" "	N. B. J-6850....	Automobile drove over crossing at high rate of speed, driver apparently under the influence of liquor.
July 9....		" "	N.B. T-6676....	Automobile drove under gates while same were being lowered for engine.
June 24....		Fairville Crossing, Saint John.	N.B. C-1032....	Truck went through crossing while gates were being lowered for engine.
" 29....		" "	N.B. J-6766....	Automobile ran through crossing while stop sign was exposed.
July 19....		Jackman Crossing, Jackman, Me.	Me. 56605.....	Automobile passed one car which had stopped for train, barely missed crossing watchman and went over crossing at high rate of speed.

QUEBEC DISTRICT

Feb. 6....		Dorchester St., Quebec.	Que. 11433.....	North side gate had been lowered for C.N.R. train No. 46 and gateman was in act of lowering south side gate when auto, coming from south, passed underneath gate and ran over crossing. Auto came to stop with front of auto resting against north side gate which was broken by auto.
" 14....		Bridge Street, Quebec	Que. W-46.....	Gateman had lowered north side gate and was preparing to lower south side for Q.C.R. road engine when truck approaching from north at slow speed struck and broke gate. Driver stated brakes had failed.
April 29....		Gouin Blvd., Bordeaux.	Que. 53838.....	While gateman was lowering gates for No. 467, auto coming from north went through southwest and northeast gates breaking same. Party claimed they did not hear bell.
Feb. 2....		Montcalm St., Hull...	Ont. BE-389....	When gates were down for No. 1, auto travelling from Wrightville at 25 miles per hour ran through northwest gate breaking five feet off same. Driver claimed auto skidded on pavement.
June 27....		St. Valier Street, Quebec.	L-198.....	South gate had been lowered and gateman was in act of lowering North gate when an auto truck loaded with stone passed beneath gate and over crossing striking and breaking South gate arm. Bell at crossing ringing at time.
July 3....		Crown Street, Quebec.	113398.....	Gates had been lowered for C.N. train 46 when auto approaching crossing from South broke southeast gate. Auto backed up in time to clear train. Gate lamps burning brightly at time and bell in tower was ringing.
" 10....		" "	H-1950.....	Gates on North side had been lowered for train when auto approached from North at moderate speed—auto did not stop and gateman endeavoured to raise gates but top of auto caught and broke Northwest gate.
July 18....		Chelsea Road, Hull West.	Que. 71249.....	Auto ran around gate that was down and caught other gate breaking same off for about 12 feet.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Concluded*

ONTARIO DISTRICT

Date	Time	Crossing	Auto No.	Dangerous Practice
Feb. 3....	10.20 p.m....	St. Clair Ave., Toronto.	N. 3996.....	When gates were lowered for C.P.R. freight train going north, a car driven by Mr. Dantree, 184 Northcliffe Blvd., Toronto, broke the northeast gate. The road was very icy.
" 5....	12.50 a.m....	1 mile west of Belleville.	Ont. DM-699...	Auto drove up close to crossing before seeing approaching freight train, then skidded close enough to be struck. Four people injured, car demolished.
" 17....	3.00 p.m....	Adelaide St., London.	V. 3305.....	Auto disregarded watchman's stop sign and crossed tracks in front of engine.
" 18....	11.40 p.m....	Waterloo St., London.	U. 9358.....	Auto skidded on slippery pavement and broke north gate arm.
" 21....	11.15 a.m....	Quebec St., London...	V. 2490.....	Auto disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 25....	7.34 p.m....	Queen St., Chatham..	C. 37-221.....	Truck ran into and broke southeast gate arm while gates were being lowered.
" 25....	.....	Queen St., Chatham..	.....	While repairing gate, auto ran into and broke northwest gate arm.
" 27....	11.55 p.m....	Richmond St., London.	.....	Auto ran through north gate arms breaking same. Did not stop.
Mar. 1....	3.00 p.m....	Quebec St., London...	V. 6603.....	Auto disregarded watchman's stop sign and crossed tracks in front of freight train.
" 4....	.....	Front Street, Toronto	9198-C.....	Truck ran into gates after they had been lowered, damaging it.
" 5....	11.00 a.m....	Sydenham Rd. Xing nr. Kingston.	Ont. CN-724....	Closed car drove over crossing very close ahead of passenger train. Got clear.
" 9....	2.45 p.m....	Ann Street, London...	V. 5050.....	Auto ran into gate breaking gate arm. Driver said he did not see gate down or hear gong ringing.
" 14....	7.30 p.m....	William St., Chatham	X. 3686.....	Auto ran through southeast gate breaking gate arm.
" 15....	9.25 p.m....	Waterloo St., London.	U. 6491.....	Auto ran through and broke north and south gate arms due to slippery pavement.
" 17....	11.20 a.m....	Quebec St., London...	V. 7037.....	Auto disregarded crossing watchman and stop sign and crossed tracks in front of moving freight cars.
" 23....	11.25 a.m....	Richmond St., London	219.....	Oil truck unable to stop in time struck crossing gate arm breaking it.
" 25....	9.13 p.m....	Queen St., Chatham..	.....	Auto going at high rate of speed struck northwest gate arm breaking point off. Auto did not stop.
" 28....	.....	Front Street, Toronto	P-8803.....	Automobile ran into and damaged gate, after gates had been lowered.
April 1....	.....	" "	C. 2771.....	Automobile ran into gate standard.
" 3....	11.50 a.m....	Quebec St., London...	V. 2346.....	Auto crossed tracks in front of yard engine disregarding watchman's stop sign.
" 5....	10.30 a.m....	Richmond St., London.	K.F. 60.....	Auto ran into northwest gate arm breaking it.
" 11....	7.10 a.m....	Eramosa Rd., Guelph	.....	Auto ran into north gate and did not stop. Driver of car was lady.
" 14....	10.25 a.m....	Monaghan Rd. Xing, Peterboro.	Ont. EA-714....	Auto ran into side of engine of freight train on crossing. Clear view.
" 16....	10.40 a.m....	Quebec St., London...	V. 720.....	Auto dashed over crossing when yard engine about 20 yds. from crossing.
" 19....	11.26 a.m....	Adelaide St., London.	V. 3164.....	Auto disregarded watchman's stop signal and crossed tracks ahead of yard engine.
" 21....	7.50 a.m....	Quebec St., London...	V. 6627.....	Auto disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 25....	12.05 p.m....	Adelaide St., London.	V. 7269.....	Auto passed watchman's stop sign and crossed tracks in front of yard engine.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Concluded*ONTARIO DISTRICT—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
May 9....	9.05 a.m....	Front St. (West) Toronto.	J. 1570.....	Automobile ran into and damaged north half of No. 6 gate.
" 10....	2.25 p.m....	" "	H. 8951.....	Automobile ran into and damaged gates.
" 15....	10.15 a.m....	Adelaide St., London.	V. 8193.....	Auto disregarded watchman's stop sign and only stopped after being shouted at.
" 21....	11.25 a.m....	Concession St., Havlock.	DY-861 (Ont.)..	Auto driven into side of freight train. Driver heard whistle and bell but claims he could not get car stopped in time to avoid accident.
" 28....	.....	Raglan St., Renfrew..	CX-104 (Ont.)..	Auto ran into gate on South side breaking casting.
June 9....	8.40 a.m....	Public Crossing Glen Major.	J. 5604.....	Auto driven on to track, stopped and driver apparently tried to back car clear, but unable to do so, and auto struck by train.
" 13....	6.40 a.m....	Dundas St., Cooksville	.....	Truck stopped at crossing and seeing eastbound train standing at depot went ahead and was struck by westbound train.
" 15....	.....	Raglan Road, Renfrew	28-580-C (Ont.)	Truck ran under gates while being lowered. South and west gate half down and East and North gates down. Truck struck North gate breaking top part off.
" 16....	10.11 a.m....	Quebec St., London...	V. 7130.....	Auto crossed over tracks in front of approaching train disregarding watchman's signal.
" 16....	2.16 p.m....	" "	V. 2377.....	Auto crossed tracks in front of approaching engine disregarding Watchman's stop sign.
" 22....	.....	Front St. (West) Toronto.	E. 5183.....	Automobile ran into and damaged gates.
" 25....	11.30 a.m....	Thames St., Ingersoll.	W. 8881.....	Auto crossed tracks and ran into north gate arm breaking it.
" 29....	9.57 a.m....	George St. Belleville..	DM. 259.....	Auto driven down grade at high rate of speed, driver watching engine and did not notice flat cars being pushed ahead of engine and narrowly escaped being struck.
July 3....	12.40 p.m....	Allens Road, Guelph..	H. 7455.....	While train switching over crossing and wigwag signal working also crossing bell ringing auto started over crossing and was struck by cars.
" 10....	8.55 p.m....	Eramosa Road, Guelph.	F.J. 345.....	Bell ringing and one gate lowered when auto unable to stop ran into and broke gate arm.
" 14....	2.30 p.m....	Quebec St., London...	51458 C.....	Truck which had stopped account yard engine switching over crossing, driver cranked truck and it slipped into gear darting forward and ran into side of yard engine.
" 20....	7.50 p.m....	Lansdowne St., Peterboro.	2-748.....	Motor-cycle approached crossing, driver apparently not hearing whistle of passenger train or bell and almost struck engine.
" 21....	3.35 p.m....	St. Paul St., Lindsay.	.....	As passenger train approached crossing, 7 year old boy came down grade on tricycle and ran in front of engine and was struck and badly injured.
" 29....	5.40 a.m....	Richmond St. London	L.A. 299.....	Gates down, bell ringing, switch engine going west when car ran into S.E. gate backing it, turned and went through centre of north gates without breaking them.

TORONTO, HAMILTON AND BUFFALO RAILWAY CO.

Date	Time	Crossing	Licence No. of Auto	Dangerous practices
April 11....	12.30 a.m....	James St., Hamilton, Ont.	.....	North and south gates broken; auto going very fast, impossible to get number. Did not stop.
" 26....	8.30 p.m....	James and Hunter Sts., Hamilton, Ont.	.....	Did not see gates were lowered in time to stop—broke points off both gates.
July 10....	.....	James St., Hamilton, Ont.	D-2148.....	Proceeding north on James St., ran through both gates; did not notice they were down.
" 18....	12.00 p.m....	John St., Hamilton, Ont.	P-5407.....	Gates were down but did not see lamp on gate and drove through them, breaking lamp and southeast gate.

CANADIAN PACIFIC RAILWAY—WESTERN LINES

MANITOBA DISTRICT

Date	Time	Crossing	Auto No.	Remarks
Jan. 14....	9.40 K.	Montcalm Street, Winnipeg.	6-101.....	Drove under gates as gate was being lowered, arm of gate scratching top of car and perforating covering.
Mar. 12....	.....	" "	.....	Truck or automobile skidded into South gate and damaged it.
April 7....	20.30 K.	Montcalm St., Winnipeg.	Man. 11-701...	Driver approaching at high rate of speed and did not notice gates being lowered, swerved into ditch and up over embankment resulting in driver having six upper teeth knocked out and car damaged.
May 21....	19.45 K.	Talbot Avenue, Winnipeg.	Man. 23-997...	Auto drove under gate as it was being lowered, resulting in slight damage to automobile.
" 25....	11.00 K.	18th St., Brandon, Man.	Man. 5-825...	Drove into gates.
June 1....	3.00 K.	Talbot Avenue, Winnipeg.	Unknown....	Ran into crossing gates, slightly damaging them.

SASKATCHEWAN DISTRICT

April 2....	14.45 K.	Broadway-Yorkton.	6-133.....	Crossed over track against stop signal.
" 11....	15.40 K.	" "	22-451.....	" " "
May 12....	17.30 K.	" "	31-276.....	" " "
" 19....	17.42 K.	" "	1-224.....	" " "
" 23....	19.58 K.	" "	60-509.....	" " "
June 4....	15.18 K.	" "	73-606.....	" " "
" 5....	19.55 K.	" "	22-504.....	" " "
" 25....	15.50 K.	" "	22-412.....	" " "

ALBERTA DISTRICT

Feb. 7....	8.20 K.	4th Street West, Calgary.	7066.....	Ran into southeast gate, breaking one side off.
" 23....	9.50 K.	" "	Taxi L-192....	Ran into west centre gate breaking top.
June 23....	9.30 K.	4th Street West, Calgary.	15-054.....	Ran into southeast gate, breaking off one side.

CANADIAN PACIFIC RAILWAY—WESTERN LINES—*Concluded*

BRITISH COLUMBIA DISTRICT

Date	Time	Crossing	Auto No.	Remarks
Jan. 5....	14.22 K..	Powell Street, Van-	B.C. 82-777...	Ignored stop signal.
" 7....	9.10 K..	" " "	B.C. 91-085...	Ignored stop signal and came close to being struck by No. 3.
" 7....	14.47 K..	" " "	B.C. 73-348...	Ignored stop signal.
" 14....	9.18 K..	" " "	B.C. 79-536...	" "
" 13....	13.22 K..	" " "	B.C. 9-932...	" "
" 13....	14.23 K..	" " "	B.C. 69-699...	" "
" 18....	8.55 K..	" " "	B.C. 83-188...	" "
" 20....	11.05 K..	" " "	B.C. 81-327...	" "
" 22....	17.30 K..	Columbia Ave., Vancouver.	.....	When closing crossing gates for coach train backing into station four autos rushed under No. 3 gate when same was coming down.
" 27....	3.25 K..	" " "	.....	Auto entered west half of gate which is wrong side and nearly collided with auto coming in opposite direction.
" 28....	9.39 K..	Powell Street, Van-	B.C. 286.....	Ignored stop signal.
Feb. 4....	13.24 K..	" " "	B.C. 81-814...	" "
Jan. 1 to Mar. 31....	.....	North Vancouver ferry.	.....	Autos rushing under crossing gates when gates are descending. Pedestrians walking across tracks instead of using subway.
April 13....	16.45 K..	Powell Street, Van-	B.C. 88-026...	Went by stop sign almost immediately in front of Eng. 2614 which had to be stopped to prevent mishap.
May 8....	1.18 K..	North Vancouver Ferry.	B.C. 70-681...	Passed under crossing gate north side track when gate on south side of track was already down.
May 20....	8.01 K..	Columbia Avenue, Vancouver.	B.C. 71-411...	Truck travelling at too high a speed failed to stop and shoved auto B.C. 78-432 into crossing gates which were down.

ESQUIMALT AND NANAIMO RAILWAY

Feb. 23....	2.30 K..	Russell Street, Victoria.	9122.....	Paving gang were engaged in effecting repairs to pavement at diamond crossing when an approaching truck driver, apparently watching his clearance from the paving debris, overlooked the adjacent railway gate which was in an open position and crashed into same. Careful driving and foresight would have avoided the mishap.
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MISHAPS AT PUBLIC HIGHWAY CROSSINGS, WHERE NO PERSONAL INJURY IS
INVOLVED PERIOD JANUARY 1 TO JUNE 30, 1931

MANITOBA DISTRICT

Division	Date	Location	Particulars
<i>Fort William Terminals.</i>	Nil.		
<i>Kenora.....</i>	Nil.		
<i>Winnipeg Terminals....</i>	Feb. 16.....	L. Lead, McPhillips Street, Winnipeg, Man.	At 21.55K, a Chevrolet sedan, Man. licence 2-438, driven by Jas. McMahon, of 943 Valor Road, ran into cars which were being shoved by engine 6249, damaging automobile and C.P-83346. Cause failure of driver to stop automobile in sufficient time due to slippery nature of street.
	March 22.....	Nairn Avenue, Winnipeg, Man.	At 1.40K, Chevrolet coupe, Man. licence 8-588, driven by Frederick Fraser, moving east on Nairn Avenue, ran into coach turn from Winnipeg station, damaging automobile and CP-3698. Cause driver of car did not observe cars moving over crossing. Speed restriction and flagging instructions observed; engine bell ringing passing over crossing and engine head-light burning.
	June 10.....	Public crossing MP-122½ Keewatin Sub-division.	At 3.32K, as silk train passed over public crossing an Essex sedan, Man. licence 6-648 proceeding south, struck the engine at the left side under the cab, damaging front of automobile and doing slight damage to engine 2566. Automobile had been stolen and occupants disappeared. Statutory warnings were given for the crossing.
<i>Portage.....</i>	Feb. 16.....	Public crossing, MP-3-4 LaRiviere Sub-division.	No. 122 struck rear end of British American Oil Company's truck, damaging same. Driver endeavored to cross ahead of train.
<i>Brandon.....</i>	Nil.		
<i>Souris.....</i>	Nil.		

SASKATCHEWAN DISTRICT

MOOSE JAW DIVISION

May 8.....	Six poles north of crossing at Mileage 10, Kerrobert Subdivision.	H. J. Middleton, Storekeeper of Ardath, Sask., driving an auto approaching from the north on the highway, struck track motor operated by Section Foreman G. Lylyk, which was then standing on the crossing, derailing track motor and slightly damaging auto.
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SASKATOON DIVISION

April 27.....	Third Avenue, Saskatoon.....	When yard engine 6154 was switching cars, driver of auto attempted to pass ahead of cars being switched over crossing. Rear right fender of auto struck by leading car.
May 21.....	Avenue C, Saskatoon.....	Yard Engine 6287 pushing cars, and driver of auto claimed was fixing wind shield wiper and failed to notice cars. Right front fender of auto struck by leading car.

ALBERTA DISTRICT

CALGARY DIVISION

Date	Location	Particulars
May 7.....	8th Street East, Calgary.....	Yard engine 6246, when backing up light from Alyth to West Calgary, it was struck by automobile bearing licence No. 7615 driven by E. Frank, damaging auto and right foot board on engine tender.

EDMONTON DIVISION

April 2.....	Strathcona.....	Yard engine 3404 struck Hupmobile taxi bearing licence No. L-2, driven by J. McNeill. Driver of car failed to take necessary precaution before crossing track.
May 6.....	Strathcona.....	Train No. 525 struck Essex coach, licence 64-386, driven by H. L. Shutt. Driver took no precaution and did not notice approaching train.
May 12.....	Clive.....	Train No. 529 struck truck, licence T B-3063, driven by W. Bowness. Driver claims did not see train approaching.
May 21.....	Strathcona.....	Train No. 63 struck truck, licence T C-9534, driven by A. Campbell. Driver did not take sufficient precaution before crossing track, to see train approaching.

LETHBRIDGE DIVISION

June 18.....	M. 98.5 Stirling Subdivision.....	Extra west 3252 struck Essex sedan driven by A. Dainty.
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BRITISH COLUMBIA DISTRICT

REVELSTOKE DIVISION

Feb. 2.....	Price St. crossing, Vernon, B.C.....	Extra North 563, Conductor F. Cormier, Engineer A. Fahey, moving light engine over crossing, Chevrolet truck, B.C. 51-727, owned by Capt. J. C. DunWaters, driven by A. A. Gray, with C. Barr passenger, attempted to cross in front of engine. Truck turned over and two rear wheels broken. No personal injury.
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VANCOUVER DIVISION

March 9.....	Hatzic, B.C., Mile 84.46 Cascade Subdn..	Auto truck B.C. 65-909 travelling parallel with track turned onto crossing almost immediately in front of Extra 469 East, and badly damaged.
April 4.....	Vancouver, B.C., Alexander Street.....	Driver of Auto B.C. 97-316 failed to see approach of yard engine and was pushed clear of tracks by engine.

ESQUIMALT AND NANAIMO RAILWAY COMPANY

Date	Location	Particulars
April 19th, 1931, 15.20 o'clock.	Level crossing of Wilson Street (Old Esquimalt Road, mile 1.1 Victoria Subdivision.	Extra 3266 South struck Ford delivery truck license B.C. 9467. Statutory signals had been sounded by engine for crossing. Auto was proceeding west and first noticed by fireman and when engine about car length from crossing; emergency brakes applied; auto approaching crossing at speed about 20 miles per hour and made no attempt to stop. Cause failure of autoist to take precautions. Auto slightly damaged.
June 3rd, 1931, 14.00 o'clock.	Alberni Road, mile 0.3 Port Alberni Subdivision.	Extra 3277 West, backing up over crossing struck auto licence B.C. 29815. Auto had come to a stop just on the rails. There was a full view of Extra 3277 for a distance of 400 feet along the highway, but autoist's attention was evidently focussed on Train No. 7 standing at Parksville station about to leave and he failed to note Extra 3277 on the other side of the crossing. Auto slightly damaged.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, September 1, 1931

No. 13

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ORDER No. 47191

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 8th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the toll published to Truro, Nova Scotia, in item 5-B of Supplement No. 7 to Tariff C.R.C. No. 810, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 5-B of Supplement No. 7 to Tariff C.R.C. No. 810, approved herein, is 22 cents per hundred pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47192

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 8th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in items 262 and 299 of Supplement No. 14 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act, would have been effective in lieu of those published in the said items 262 and 299 of Supplement No. 14 to Tariff C.R.C. No. 856, are the sixth and fourth class rates respectively, in effect prior to July 1, 1927.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47193

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

SATURDAY, the 8th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in item 8 of Supplement No. 7 to Tariff C.R.C. No. E-4369, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 8 of Supplement No. 7 to Tariff C.R.C. No. E-4369, approved herein, are as follows:—

From	Rates in cents per hundred pounds
Fredericton, N.B.	} 78
Milltown, N.B.	
Saint John, N.B.	
Yarmouth, N.S.	..... 89

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47194

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

SATURDAY, the 8th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the toll published in item 56 of Supplement No. 15 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 56 of Supplement No. 15 to Tariff C.R.C. No. 811, approved herein, is 5 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47195

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2.

SATURDAY, the 8th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 24 to Tariff C.R.C. No. E-1230.

Supplement 7 to Tariff C.R.C. No. E-1248.

Supplement 9 to Tariff C.R.C. No. E-1261.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47200

In the matter of the complaint of the Ontario Paper Company, Limited, Thorold, Ontario, against the Order of the Board No. 46167, dated January 22, 1931, removing the suspension provided for by the Order of the Board No. 42931, dated July 8th, 1929, so far as it applies to item No. 40-A in Supplement No. 1 to Canadian National Railway Tariff C.R.C. No. E-1403, increasing the rates on Newsprint paper, in carloads, from Thorold, Ontario, to Chicago, Illinois, and against Supplement No. 12 to the said Tariff C.R.C. No. E-1403;

And the matter of the application of the Ontario Paper Company, Limited, Chicago, Illinois (Thorold, Ontario), for an interim Order suspending the said Order of the Board No. 46167, dated January 22, 1931, and the supplements complained of.

File No. 24602.14.3.

MONDAY, the 10th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Ottawa, July 6th and 7th, 1931, in the presence of counsel for and representatives of the Ontario Paper Company, Limited, the Anglo-Canadian Pulp and Paper Mills, J. R. Booth Limited, Canada Power and Paper Association, E. B. Eddy Company, Limited, Guy Tombs Limited, Price Brothers and Company, Limited, and the Canadian National Railways, and what was alleged,—

The Board Orders: That the complaint and application be, and they are hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47205

In the matter of the application of the Canadian National Railways for suspension of Supplement No. 17 to Canadian Pacific Railway tariff C.R.C. No. W-2902, containing joint rates on coal, carloads, from the Star Mining Company's mine at Rosedale and the J. D. Thomas Coal Company's mine at Drumheller to local stations on the Canadian National Railways west of Port Arthur and Fort William, and Order No. 45550, dated October 8, 1930, suspending the said Supplement pending hearing by the Board.

File No. 27425.123.

MONDAY, the 10th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 26, 1931, in the presence of counsel for and representatives of the Canadian Pacific Railway Company and the Canadian National Railways, the Red Deer Valley Coal Company, Limited, and the Great West Coal Company, Limited (owners and operators of the Star Mine), and what was alleged,—

The Board Orders: That the said Supplement No. 17 to Canadian Pacific Railway Company Tariff C.R.C. No. W-2902, be, and it is hereby, disallowed; that as line haul carrier, the Canadian National Railways shall make absorption of interswitching in accordance with the provisions of the Board's General Order No. 252, dated October 26, 1918, and tariffs issued pursuant thereto; and that if, in fulfilment of its agreement with the mining companies hereinbefore referred to, the Canadian Pacific Railway Company absorb a portion of its published interswitching toll, such absorption shall be provided for by an appropriate provision therefor in its tariff, such absorption provision by the Canadian Pacific Railway Company not to affect or reduce the amount of absorption required to be made by the line haul carrier under the General Interswitching Regulations as set out in General Order No. 252.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47197

In the matter of the application of the City of Hamilton, for an Order directing the Bell Telephone Company of Canada to remove its conduits, plant, and cable from the present high level highway bridge over the Desjardins Canal at York street in the city of Hamilton, and from that portion of York street from the southerly end of Bridge No. 5 to a point approximately 800 feet southerly of the south end of the said high level highway bridge; approving of the rearrangement of the Bell Telephone Company of Canada's conduits, plant, and cable on the proposed new highway bridge over the Desjardins Canal at York street, according to the plan and profile prepared by E. M. Proctor, Consulting Engineer, dated the 21st day of November, 1930, on file with the Board under files Nos. 20161 and 20161.2; and directing the Bell Telephone Company of Canada to pay any additional cost to the Corporation of the City of Hamilton of the said highway bridge occasioned by the re-arrangement of such conduits, plant, and cable on the said new bridge.

Files Nos. 20161 and 20161.2.

TUESDAY, the 11th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the application of the city of Hamilton, dated the 21st day of April, 1931, the answer of the Bell Telephone Company of Canada thereto, the Agreement of Settlement entered into between the city of Hamilton and the Bell Telephone Company of Canada by way of compromise of their respective rights and contentions in respect of the said application (which said agreement is set forth and contained in By-law No. 4248 of the city of Hamilton, passed on the 13th day of July, 1931, and in the schedules appended thereto), and the undertakings given by the city of Hamilton to the Bell Telephone Company of Canada in pursuance of the said Agreement of Settlement, all filed; and upon the report and recommendation of the Chief Engineer of the Board, the Bell Telephone Company of Canada consenting hereto, pursuant to the terms of the agreement above referred to,—

It is Ordered:

1. That the Bell Telephone Company of Canada, be, and it is hereby, directed to remove its conduits and cable from the present high level highway bridge over the Desjardins canal at York street, in the city of Hamilton, and from that portion of York street extending from the southerly end of Bridge No. 5 to a point approximately 800 feet southerly of the south end of the said high level highway bridge, and rearrange and relocate its said plant on York street and upon and across the new high level highway bridge authorized to be constructed by order of the Board No. 47196, dated August 11, 1931, all in accordance with the locations and elevations shown on the plan and profile prepared by E. M. Proctor, Consulting Engineer, dated the 21st day of November, 1930, on file with the Board, and also to make and do all temporary works and construct all temporary lines necessary and incident to the efficient continuation of its telephone service while the works hereinbefore directed are being carried out.

2. That in so far as it seeks an order directing the Bell Telephone Company of Canada to pay any additional cost to the corporation of the city of Hamilton of the said new high level highway bridge, authorized by order of the Board No. 47196, occasioned by the rearrangement of the conduits, plant, and cable of the Bell Telephone Company of Canada, as hereinbefore directed, upon the said new bridge, this application be, and the same is hereby, dismissed.

3. That the corporation of the city of Hamilton pay to the Bell Telephone Company of Canada fifty per cent of all labour, cost, and expense, including haulage, engineering, and supervision, incurred by the Bell Telephone Company of Canada in carrying out the permanent and temporary works directed by this Order; such payment to be made in monthly installments as the work progresses, payable forthwith upon accounts being rendered therefor by the Bell Telephone Company of Canada.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47199

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

TUESDAY, the 11th day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in Supplement No. 3 to Tariff C.R.C. No. E-4485, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. E-4485, approved herein, are as follows:—

Index No.	To	Rates in cents per 100 pounds From Group		
		1	2	3
1497	Bertrand, Ont... ..			
	to			
1517	Schreiber, Ont.			
1520	Selim, Ont... ..			
	to			
1537	MacKenzie, Ont... ..			
3100	Spruce, Ont... ..	76½	76½	76½
	to			
3160	Hawk Junction, Ont... ..			
3165	Alden, Ont.			
	to			
3215	Langdon, Ont.			
3225	Norris, Ont.			
	to			
3255	Hearst, Ont... ..			
3260	Josephine Junction, Ont.			
	to			
3295	Michipicoten, Ont.			
22900	Beebe Junction, Que... ..	40	40	40
22905	Tomifobia, Que.			
22910	Boynton, Que... ..	38½	38½	38½
22915	Ayers Cliff, Que.			
22920	Massawippi, Que... ..	38	38	38
22925	North Hatley, Que... ..	37	37	37
22930	Eustis, Que.	36	36	36
22935	Capelton, Que... ..			
22960	Ascot, Que... ..	37	37	37
22975	East Angus, Que.	38	38	38
22990	Dudswell, Que... ..			
22995	Bishop's Crossing, Que... ..	38½	38½	38½
23000	Marbleton, Que... ..			
23005	Weedon, Que... ..	40	40	40
23010	St. Gerard, Que... ..	40	40	40
23025	Garthby, Que... ..	..	41½	41½
23155	Rock Island, Que... ..	40	40	40
23160	Stanstead, Que... ..			
23175	St. Victor, Que... ..	40	40	40
23180	St. Ephrem, Que... ..	..	41½	41½
23185	St. Evariste, Que... ..	40	40	40
23200	Courcelles, Que... ..	38½	38½	38½
23215	St. Sebastian, Que... ..	38	38	38
23235	St. Samuel, Que... ..	37	37	37
23240	Ste. Cecile, Que... ..	36	36	36

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47227

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.14

SATURDAY, the 15th Day of August, A.D. 1931.

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in Column A of Tariff C.R.C. No. 680, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of those published in the said column A of Tariff C.R.C. No. 680, approved herein, are as follows:—

Miles	Rates in cents per hundred pounds
10..	5
20..	5
30..	5½
40..	6½
50..	7
60..	7½
70..	7½
80..	8
90..	8½

T. C. NORRIS,
Commissioner.

ORDER No. 47228

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act. And the Order of the Board No. 47192, dated August 8, 1931:

File No. 34822.13

FRIDAY, the 14th Day of August, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in items 262 and 299 of Supplement No. 14 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are, hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 262 and 299 of Supplement No. 14 to Tariff C.R.C. No. 856, approved herein, are as follows:—

For item 262

The difference between the fourth class rates to Halifax, Nova Scotia, published in Dominion Atlantic Railway Tariffs C.R.C. Nos. 791 and 690 added to the sixth class rates published in Tariff C.R.C. No. 791.

In barrels with cloth tops or in baskets with solid or slatted wooden tops—the difference between the second class rates published in Dominion Atlantic Railway Tariffs C.R.C. Nos. 791 and 690 added to the fourth class rates published in Tariff C.R.C. No. 791.

3. And the board further orders that Order No. 47192, dated August 8, 1931, made herein, be, and it is hereby, rescinded.

T. C. NORRIS,
Commissioner.

ORDER No. 47229

File No. 34822.13

SATURDAY, the 15th day of August, A.D. 1931.

Hon. T. C. NORRIS, *Commissioner*.
J. A. STONEMAN, *Commissioner*.

The Board Orders:

1. That the tolls published in items 3, 4, and 299A of Supplement No. 15 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 3, 4, and 299A of Supplement No. 15 to Tariff C.R.C. No. 856, approved herein, are as follows:—

For Item 3—

From	To Halifax, Nova Scotia Rates in cents per barrel
Hartville, N.S. } Hanstport, N.S. }	40
Horton Landing, N.S. } Port Williams, N.S. }	45
Kentville, N.S.	46
Coldbrook, N.S.	52
Berwick, N.S.	51
Kingston, N.S.	53
Paradise, N.S.	57
Annapolis, N.S.	62
Yarmouth, N.S.	58
Brooklyn, N.S.	44
Mosherville, N.S.	45
Clarksville, N.S. } Kennetcook, N.S. }	46
Mill Village, N.S. }	
Sheffield Mills, N.S.	52
Billtown, N.S.	54
Grafton, N.S.	53
Weston, N.S.	57

For Item 4

The difference between second class rates as published in Dominion Atlantic Railway Tariffs C.R.C. Nos. 791 and 690, added to the third class rate published in Tariff C.R.C. No. 791.

For Item 299A

The difference between the first class rates as published in Dominion Atlantic Railway Tariffs C.R.C. Nos. 791 and 690, added to the fourth class rates published in Tariff C.R.C. No. 791.

T. C. NORRIS,
Commissioner.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, September 15, 1931

No. 14

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ORDER No. 47250

In the matter of the application of the Hull Electric Company, under Section 333 of the Railway Act, for approval of its Standard Passenger Tariff C.R.C. No. P. 21, on file with the Board under file No. 21781.3.

FRIDAY, the 21st day of August, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Standard Passenger Tariff C.R.C. No. P. 21 of the Hull Electric Company, on file with the Board under file No. 21781.3, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47260

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Sections 251 and 276 of the Railway Act, for authority to open for the carriage of traffic the new connection with the Algoma Eastern Railway in the City of Sudbury, Province of Ontario; and to use and operate the bridge carrying their tracks over the Canadian Pacific Railway at mileage 1.9.

File No. 9188.106

TUESDAY, the 25th day of August, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic their new connection with the Algoma Eastern Railway in the city of Sudbury and province of Ontario; and to use and operate the bridge carrying their tracks over the Canadian Pacific Railway at mileage 1.9.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47272

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 27th day of August, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 29 to Tariff C.R.C. No. E-1234.

Supplement 15 to Tariff C.R.C. No. E-1238.

Supplement 15 to Tariff C.R.C. No. E-1239.

Supplement 34 to Tariff C.R.C. No. E-1240.

Supplement 33 to Tariff C.R.C. No. E-1246.

Supplement 14 to Tariff C.R.C. No. E-1258.

Supplement 21 to Tariff C.R.C. No. E-1259.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47286

In the matter of the application of the Express Traffic Association of Canada, for approval of proposed Supplement No. 13 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives, on file with the Board under file No. 1717.12.

SATURDAY, the 29th day of August, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 13 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives, filed by C. N. Ham, Chairman of the Express Traffic Association, on file with the Board under file No. 1717.12, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47303

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

WEDNESDAY, the 2nd day of September, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 681, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. 681, approved herein, is 9½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47304

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 2nd day of September, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 863, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 863, approved herein, are as follows:—

From	Rates in cents per barrel	
	Less than carloads.	Carloads
Ellerhouse, N.S., to Newport, N.S.	27½	18
Windsor, N.S., to Hantsport, N.S.	29	19
Avonport, N.S., to Port Williams, N.S.	30½	21½
Kentville, N.S.	32½	22¼
Coldbrook, N.S., to Berwick, N.S.	35	24½
Aylesford, N.S., to Kingston, N.S.	36½	25½
Wilmot, N.S., to Annapolis Royal, N.S.	38	27½
Clementsport, N.S., to Digby, N.S.	41½	30
North Range, N.S., to Yarmouth, N.S.	44	34
Brooklyn, N.S., to Mosherville, N.S.	30½	21½
Clarksville, N.S., to Kennetcook, N.S.	32½	22½
South Maitland, N.S., to McNutt's Creek, N.S.	36½	25½
Mill Village, N.S., to Kingsport, N.S.	35	24½
Billtown, N.S., to Grafton, N.S.	35	24½
Somerset, N.S., to Weston, N.S.	36½	25½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47305

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 2nd day of September, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published on woodpulp screenings from Edmundston, New Brunswick, to Portneuf, Quebec, in Supplement No. 5 to Tariff C.R.C. No. E-4304, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 5 to Tariff C.R.C. No. E-4304, approved herein, is 20½ cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47306

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 2nd day of September, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 12 to Tariff C.R.C. No. E-1226.

Supplement 22 to Tariff C.R.C. No. E-1259.

Supplement 2 to Tariff C.R.C. No. E-1702.

S. J. McLEAN,

Assistant Chief Commissioner.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, October 1, 1931

No. 15

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Application of the Corporation of the City of Victoria and the Panama Pacific Grain Terminals Limited, for an Order directing the Canadian Pacific Railway Company to fix and incorporate in its Tariff of Tolls an export grain rate to the terminal elevator in the City of Victoria; and that the export grain rate to be so fixed be the same as the rate to the City of Vancouver and equal to the export grain rate to said elevator now incorporated in the special competitive tariff issued by the Canadian National Railways.

File No. 37228

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

This is an application by the Panama Pacific Grain Terminals Limited and the City of Victoria, for an order directing the Canadian Pacific Railway Company to put into effect the same freight rate on all grain billed to their elevator at Ogden Point, in the city of Victoria, as now applies to grain billed to the terminal elevators situated in the city of Vancouver, B.C.

The Panama Pacific Grain Terminals Limited built their elevator at Ogden Point in 1928. Prior to its erection an arrangement was made with the Canadian National Railways to give the Panama Pacific Company the same rate on bulk grain for export, as was then charged to Vancouver. In accordance with this arrangement the tariff of the Canadian National Railways on bulk grain to Pacific coast points was amended, effective August 1, 1928, by stipulating that the rates named in the tariff applying to Vancouver should also apply to Victoria.

Apparently when the arrangement above detailed was made with the Canadian National Railways, the Panama Pacific Company thought it sufficient to enable them to operate their elevator at a profit, but later on it was discovered that additional traffic over Canadian Pacific Railway Lines was needed, and in February, 1930, the present application was launched.

While, perhaps, it may have no direct bearing upon the issue to be determined, the fact may be noted that the facilities of the Canadian National Railways for delivery of grain at Victoria are very different from those of the Canadian Pacific Railway Company. The terminus of the Canadian National Railway Line is at Port Mann. It is said that it costs the Canadian National Railways \$17 for every car of grain delivered to an elevator at Vancouver, while they can deliver to Ogden Point by barge for \$10 per car. On the other hand, the Canadian Pacific Railway has direct access over its own rails to all the elevators at Vancouver, with the exception of the Midland Pacific served by the Vancouver Harbour Commissioners' Railway, whose charge for switching is \$3.50 per car which is absorbed by the Canadian Pacific Railway.

The Canadian Pacific Railway Company's terminus is at Vancouver. They, however, operate barges between Vancouver and Ladysmith, and between Vancouver and Esquimalt, and operate the Esquimalt and Nanaimo Railway into Victoria. The water distance from Vancouver to Victoria is 82 miles. The barge slip at Ogden Point was designed and built to suit those of the Canadian National Railways, and does not suit those of the Canadian Pacific Railway Company. In order to deliver grain direct from Vancouver to Ogden Point, the Canadian Pacific Railway Company would have to construct barges to suit the slip at that point or, as suggested by counsel in support of the application, build a slip of their own. On the other hand, the Canadian Pacific Railway Company can barge cars of grain either to Ladysmith or Esquimalt, take them down over the Esquimalt and Nanaimo Railway to Victoria, transfer them to the Canadian National Railways, who in turn would switch them on a barge and tow them down Victoria Harbour to Ogden Point. By this route the Canadian Pacific Railway Company estimates that it would cost \$42.70 per car, while the movement by the direct route from Vancouver to Ogden Point would cost \$27.40 per car.

At the hearing, Mr. Turnbull, who appeared for the Panama Pacific Grain Terminals Limited, admitted that his whole case was based on section 314 of the Railway Act, and that the sole question was whether there was unjust discrimination as between Victoria and Vancouver.

Section 314 (4) reads as follows:—

“No toll shall be charged which unjustly discriminates between different localities”.

I am clearly of opinion that in this case it has not been shown that any unjust discrimination results from the refusal of the Canadian Pacific Railway Company to put in the rate asked for.

In *Quebec Harbour Commissioners v. Canadian Pacific Railway*, 27 C.R.C. 121, the Quebec Board of Trade asked that export rates on grain from Georgian bay ports to Quebec be placed on the same basis as to the port of Montreal. The distance from the bay ports to Montreal is 371 miles, and to Quebec 532 miles, or 161 miles greater distance to Quebec than to Montreal.

The Chief Commissioner, delivering the judgment of the Board in this case, said, p. 123:—

“ . . . This Board is directed by the Railway Act to grant to the railway companies just and reasonable rates, and I am at a loss to see how we can contend that we are carrying out the law in granting a rate to Quebec, the same as to Montreal, under the mileage conditions just above described ”.

In this case, as in the present case, the argument was used that the Canadian National Railways are carrying grain to Saint John, a distance of 500 miles beyond Montreal, for one cent per 100 pounds over the Montreal rate, and it was there pointed out that the rate in question was one compelled by the com-

petition of the American roads. The application before us is, in my judgment, concluded by the decision of the Board in the Vancouver Island Associated Boards of Trade v. Canadian Pacific Railway and Canadian National Railways, 27 C.R.C., 129.

This was an application to have main land coast rates on lumber in carload lots extended to cover Vancouver island points. The case for the applicant was based largely upon the ground that the then existing arbitrary of 2 cents per 100 pounds was discriminatory against Vancouver island shippers. The Board held that there was no discrimination, and that 2 cents was a reasonable rate for transporting lumber by barge from Vancouver island to the main land.

The application will be dismissed.
September 15, 1931.

Commissioners Norris and Stoneman concurred.

ORDER No. 47358

In the matter of the application of the Corporation of the City of Victoria and the Panama Pacific Grain Terminals, Limited, for an Order directing the Canadian Pacific Railway Company to fix and incorporate in its tariff of tolls an export grain rate to the terminal elevator in the City of Victoria; and that the export grain rate to be so fixed be the same as the rate to the City of Vancouver and equal to the export grain rate to the said elevator now incorporated in the special competitive tariff issued by the Canadian National Railways.

File No. 37228

TUESDAY, the 15th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 10, 1931, in the presence of counsel for the applicants and the railway company, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47319

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 2nd day of September, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published on Pulpwood in Supplement No. 34 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 34 to Tariff C.R.C. No. 817, approved herein, are as follows:—

Miles	Rates in cents per hundred pounds
Not over 5.. . . .	4
Over 5 not over 10.. . . .	4
Over 10 not over 20.. . . .	4½
Over 20 not over 30.. . . .	5
Over 30 not over 40.. . . .	5
Over 40 not over 50.. . . .	5½
Over 50 not over 60.. . . .	6½
Over 60 not over 70.. . . .	7
Over 70 not over 75.. . . .	7
Over 75 not over 80.. . . .	7½
Over 80 not over 90.. . . .	8
Over 90 not over 100.. . . .	8
Over 100 not over 125.. . . .	8½
Over 125 not over 150.. . . .	9

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47310

In the matter of the application of H. G. Toll for permission to file a supplement to his Tariff No. 29-V upon one day's notice, to correct error in C.R.C. number.

File No. 27612.57

FRIDAY, the 4th day of September, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that an error has been made in assigning C.R.C. No. 592 to H. G. Toll's tariff No. 29-V,—

The Board orders: That H. G. Toll be, and he is hereby, permitted to file upon one day's notice a supplement to the said Tariff 29-V changing the C.R.C. number to read "593".

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47339

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 47304, dated September 2, 1931.

File No. 34822.13

THURSDAY, the 10th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in constructing certain normal tolls certified in Order No. 47304, dated September 2, 1931,—

The Board orders: That the said Order No. 47304 be, and it is hereby, amended by substituting the following normal tolls for those shown therein, namely:—

From—		Rates in cents per barrel less than carloads Carloads	
North Range, N.S.	}		
to			
Yarmouth, N.S.	}	45	34
Billtown, N.S.		35	25
Lakeville, N.S.	}	35½	25½
to			
Grafton, N.S.	}	37½	26
Somerset, N.S.			
to	}		
Weston, N.S.			

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47341

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 11th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 45 and 110A of Supplement No. 32 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 45 and 110A of Supplement No. 32 to Tariff C.R.C. No. 817, approved herein, are as follows:—

Item 45		Rates in cents per hundred pounds	
From—			
Brooklyn, N.S.	}		
Scotch Village, N.S.		5
Mosherville, N.S.	}		
Clarksville, N.S.		5½
Kennetcook, N.S.	}		
Patterson's, N.S.		4½
Doddridge, N.S.	}		
South Maitland, N.S.		4
Item 110A			
Kingston, N.S.	}		
Wilmot, N.S.		13½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47342

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 11th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll on brick from Avonport, Nova Scotia, to Kentville, Nova Scotia, published in Supplement No. 14 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. That the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 14 to Tariff C.R.C. No. 811, approved herein, is 5 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47343

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 11th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll on household goods, not released, published in item 206A of Supplement No. 11 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 206A of Supplement No. 11 to Tariff C.R.C. No. 856, approved herein, is 21½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47344

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 11th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 89 of Supplement No. 22 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of

the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, the Dominion Atlantic Railway Company's proportion to be reported at 9·8 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll which but for the said Act would have been effective in lieu of that published in the said item 89 of Supplement No. 22 to Tariff C.R.C. No. 812, approved herein, is 13·3 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47345

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 11th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 140 of Supplement No. 31 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 140 of Supplement No. 31 to Tariff C.R.C. No. 817, approved herein, is 13½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47368

In the matter of the agreement, dated December 17, 1927, between His Majesty the King in the right of the Province of Manitoba, the Manitoba Northern Railway Company, and the Canadian National Railway Company, which, among other things, provides in paragraph 3 that the revenues and expenses of the Manitoba Northern Railway Company shall be determined in accordance with the formula approved in writing by the Board of Railway Commissioners for Canada; and the application for approval of the said formula.

File No. 36337.4.

WEDNESDAY, the 16th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The matter having been investigated by Mr. G. S. Wrong, Chief, Transportation and Public Utilities Branch of the Dominion Bureau of Statistics, at the Board's request, and the railway company having altered the formula to agree with the agreement at his suggestion,—

It is Ordered: That the formula for determining the revenues and expenses of the Manitoba Northern Railway Company, referred to in the said agreement, a copy of the said formula as amended being attached hereto marked "A", be, and the same is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47366

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2.

THURSDAY, the 17th day of September, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board Orders: That the tolls published in the following schedules filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3, namely:—

Supplement 25 to Tariff C.R.C. No. E1230

Supplement 48 to Tariff C.R.C. No. E1237

Supplement 34 to Tariff C.R.C. No. E1246

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47367

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

THURSDAY, the 17th day of September, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 865, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 865, approved herein, are as follows:—

From	Rates in cents per barrel	
	Less than carloads	Carloads
Ellerhouse, N.S.	22½	14
Newport, N.S.		
Windsor, N.S.		
Falmouth, N.S.	23	14½
Mount Denson, N.S.		
Hantsport, N.S.		
Avonport, N.S.	24½	14½
to Port Williams, N.S.		
Kentville, N.S.	25½	16
Coldbrook, N.S.	26	18
to Berwick, N.S.		

From	Rates in cents per barrel	
	Less than carloads	Carloads
Aylesford, N.S... to Kingston, N.S...	28	19½
Wilmot, N.S... to Annapolis Royal, N.S...	30½	22½
Clementsport, N.S... to Digby, N.S...	36	24
North Range, N.S... to Yarmouth, N.S...	33½	24½
Brooklyn, N.S... to Mosherville, N.S...	24½	14½
Clarksville, N.S... Kennetcook, N.S...	25½	16
Pattersons, N.S... Burtons, N.S...	26	18
South Maitland, N.S... Clifton, N.S... Lower Truro, N.S...	28	19½
Truro, N.S...	31	22½
Mill Village, N.S... to Kingsport, N.S...	26	18
Billtown, N.S...	26½	18
Lakeville, N.S... to Grafton, N.S...	26½	18½
Somerset, N.S... Weston, N.S...	28½	20

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47386

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of
the Maritime Freight Rates Act.*

File No. 34822.12.

FRIDAY, the 18th day of September, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

1. That the tolls published in Item 88 of Supplement No. 22 to tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company under Section 9 of The Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Item 88 of Supplement No. 22 to tariff C.R.C. No. E-4310, approved herein, is 24 cents per 100 pounds, less 1½ cents per 100 pounds account of water haul.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47387

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

FRIDAY, the 18th day of September, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

1. That the changed tolls published in Supplement No. 14 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 14 to Tariff C.R.C. No. E-2140, approved herein, are as follows:—

		1	2	3	4	5	6	7	8	10
				Rates in Cents per			100 lbs.			
From Riviere du Loup, P.Q..... } To Actonvale, P.Q. }		75	66½	56½	48	38	34½	28½	31	25½
From Baker Brook, N.B. } Caron Brook, N.B. } Clairs, N.B. } Edmundston, N.B. } St. Hilaire, N.B. } To Quebec, P.Q. }		90	79	68	55½	45½	41½	34½	36½	30½
From Saint John, N.B. } To Les Forges, P.Q. } to Labissonniere, P.Q. } (inclusive)		96½	84	71½	60	48	45	35½	36½	33½
From Halifax, N.S. } To Les Forges, P.Q. } to Labissonniere, P.Q. } (inclusive)		100	87½	75	62	50½	47	36½	39	35½
From Middleton, N.S. } To Les Forges, P.Q. } to Labissonniere, P.Q. } (inclusive)		116	101	87	73½	57½	55½	42	41½	37½
From Bridgetown, N.S. } To Les Forges, P.Q. } to Labissonniere, P.Q. } (inclusive)		116	101	87	73½	57½	55½	42	41½	37½

		Rates in Cents per 100 lbs.								
		1	2	3	4	5	6	7	8	10
From	Yarmouth, N.S.	129	114½	97½	81	64½	61	46	48	44½
To	Les Forges, P.Q.									
	to									
	Labissonniere, P.Q.									
		(inclusive)								
From	Saint John, N.B.	96½	84	72½	60	48	45	35½	36½	33½
To	St. Maurice, P.Q.									
	St. Narcisse, P.Q.									
	Lac a la Tortue, P.Q.									
From	Halifax, N.S.	100	87½	76	62	50½	47	36½	39	35½
To	St. Maurice, P.Q.									
	St. Narcisse, P.Q.									
	Lac a la Tortue, P.Q.									
From	Middleton, N.S.	116	101	87	73½	57½	55½	42	41½	37½
To	St. Maurice, P.Q.									
	St. Narcisse, P.Q.									
	Lac a la Tortue, P.Q.									
From	Bridgetown, N.S.	116	101	87	73½	57½	55½	42	41½	37½
To	St. Maurice, P.Q.									
	St. Narcisse, P.Q.									
	Lac a la Tortue, P.Q.									
From	Yarmouth, N.S.	129	114½	97½	81	64½	61	46	48	44½
To	St. Maurice, P.Q.									
	St. Narcisse, P.Q.									
	Lac a la Tortue, P.Q.									
From	Saint John, N.B.	96½	84	72½	60	48	45	35½	36½	33½
To	Proulx, P.Q.									
	Grandes Piles, P.Q.									
From	Halifax, N.S.	100	87½	76	62	50½	47	36½	39	35½
To	Proulx, P.Q.									
	Grandes Piles, P.Q.									
From	Middleton, N.S.	116	101	87	73½	57½	55½	42	41½	37½
To	Proulx, P.Q.									
	Grandes Piles, P.Q.									
From	Bridgetown, N.S.	116	101	87	73½	57½	55½	42	41½	37½
To	Proulx, P.Q.									
	Grandes Piles, P.Q.									
From	Yarmouth, N.S.	129	114½	97½	81	64½	61	46	48	44½
To	Proulx, P.Q.									
	Grandes Piles, P.Q.									
From	Middleton, N.S.	230	202	172½	144	115	112	83	86½	81½
To	O'Brien, Ont.									
	White River, Ont.									
From	Bridgetown, N.S.	230	202	172½	144	115	112	83	86½	81½
To	O'Brien, Ont.									
	White River, Ont.									
From	Yarmouth, N.S.	237½	209	178	149½	119	115	84½	88	83
To	O'Brien, Ont.									
	White River, Ont.									
From	Saint John, N.B.	193½	168½	147	118	96½	94½	71	74½	68½
To	Larocque, Ont.									
	to									
	Island Falls Jet.									
		(inclusive)								

		Rates in Cents per 100 lbs.								
		1	2	3	4	5	6	7	8	10
From Halifax, N.S.	To Larocque, Ont. to Island Falls Jct. (inclusive) }	197	170	148½	119½	98	97	73½	76	70
To Larocque, Ont.										
to Island Falls Jct. (inclusive)										
From Middleton, N.S.	To Larocque, Ont. to Island Falls Jct. (inclusive) }	213	182½	157½	130½	105½	103	80	80½	76
To Larocque, Ont.										
to Island Falls Jct. (inclusive)										
From Bridgetown, N.S.	To Larocque, Ont. to Island Falls Jct. (inclusive) }	213	182½	157½	130½	105½	103	80	80½	76
To Larocque, Ont.										
to Island Falls Jct. (inclusive)										
From Yarmouth, N.S.	To Larocque, Ont. to Island Falls Jct. (inclusive) }	225½	195	169½	139	113	110	84½	86	81
To Larocque, Ont.										
to Island Falls Jct. (inclusive)										
From Riviere du Loup, P.Q.	To Larocque, Ont. to Island Falls Jct. (inclusive) }	191½	165½	143½	118½	95	92	70	72	68
To Larocque, Ont.										
to Island Falls Jct. (inclusive)										
From Middleton, N.S.	To St. Stephen, N.B. St. Andrews, N.B.	100½	88	75½	63	50	47	36½	37½	34½
To St. Stephen, N.B.										
St. Andrews, N.B.										
From Bridgetown, N.S.	To St. Stephen, N.B. St. Andrews, N.B.	97	84½	74	61½	49	45½	36½	37½	34½
To St. Stephen, N.B.										
St. Andrews, N.B.										
From Yarmouth, N.S.	To St. Stephen, N.B. St. Andrews, N.B.	94	83	70½	59½	47	43	36½	36½	32
To St. Stephen, N.B.										
St. Andrews, N.B.										
From Middleton, N.S.	To Bridgetown, N.S. Plaster Rock, N.B. and Grand Falls, N.B. to Edmundston, N.B. (inclusive) }	111	96½	83½	69	56	52	39	40½	36½
To Bridgetown, N.S.										
Plaster Rock, N.B.										
and Grand Falls, N.B.										
to Edmundston, N.B. (inclusive)										
From Yarmouth, N.S.	To Hebron, N.S. Plaster Rock, N.B. and Grand Falls, N.B. to Edmundston, N.B. (inclusive) }	115	101	87	72	57½	53½	40½	43	39
To Hebron, N.S.										
Plaster Rock, N.B.										
and Grand Falls, N.B.										
to Edmundston, N.B. (inclusive)										

On traffic from Dominion Atlantic Railway stations 1½ cents per 100 pounds is to be deducted from the normal rate account of water haul.

S. J. McLEAN,
Assistant Chief Commissioner.

CIRCULAR No. 230

September 9, 1931.

Re General reference of interlocking plants and level crossings of steam railways with particular reference to automatic signals and derail features. File 521.

I am directed to advise you that in future the Board will approve of interlocking signal protection at steam railway crossings at grade level, except in special cases where it may be deemed that derails are required.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary, B.R.C.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH
OF JUNE, 1931

Railway accidents.. . . . 191 involving 25 persons killed and 183 injured.
Railway accidents at highway crossings.. . . 24 involving 11 persons killed and 31 injured.

	Killed	Injured
Passengers.. . . .	..	19
Employees.. . . .	11	114
Others.. . . .	25	81
	<u>36</u>	<u>214</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF NOVA SCOTIA

No. of
Accidents

- 1 Automobile—Ran into side of train. Licence N.S. 72-246.

PROVINCE OF NEW BRUNSWICK

- 1 Automobile—Ran into side of train. Licence N.B. 9804.
1 Automobile—Struck push-car. Licence N.B. R-6844.

PROVINCE OF QUEBEC

- 2 Automobile—Failed to stop for crossing. Que. Licences, 74007; K-490.
1 Automobile—Ran into side of train. Licence Que. L-54.
2 Pedestrians—

PROVINCE OF ONTARIO

- 1 Automobile—Ran into side of train. Licence Ont. MP-897.
14 Automobile—Licences Ontario, DJ-464; J-5604; E-1735; DU-113; CF-694; N-5771; HE-905; BO-672; NR-717; 59279-C; 32671-C; 52619-C; 45210-C; 5004-C.
1 Bicycle—Ran into side of engine.

Of the 24 accidents at highway crossings, 6 occurred at Protected Crossings and 18 at Unprotected Crossings. Twenty of the accidents occurred during daylight hours and 4 at night.

OTTAWA, Sept. 22, 1931.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, October 15, 1931

No. 16

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ORDER No. 47406

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

THURSDAY, the 24th day of September, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in item 60 of Supplement No. 33 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 60 of Supplement No. 33 to Tariff C.R.C. No. 817, approved herein, is 7½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47407

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

THURSDAY, the 24th day of September, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in item 88 of Supplement No. 22 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item No. E-4310, approved herein, is 24 cents per 100 pounds, less 1½ cents per 100 pounds account of boat haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47408

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2.

THURSDAY, the 24th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in Supplement No. 26 to Tariff C.R.C. No. E-1230 and Supplement No. 35 to Tariff C.R.C. No. E-1240, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47442

In the matter of the application of the United Fruit Companies of Nova Scotia, Limited, The British-Canadian Fruit Association, Limited, Herbert Oyler, Limited, and the Nova Scotia Fruit Growers' Association, herein-after called the "Applicants," for an Order reducing the switching charge made by the Canadian National Railways at Halifax on cars of apples and potatoes ex Dominion Atlantic Railway for export.

File No. 34822.32.

WEDNESDAY, the 30th day of September, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Halifax, December 18, 1930, in the presence of counsel for and representatives of the applicants, the Canadian National Railways, and the Dominion Atlantic Railway Company, and what was alleged,—

It is Ordered: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47440

In the matter of the application of the Canadian Pacific Railway Company and the Canadian National Railways for approval of standard tariffs of sleeping and parlour car tolls, to provide for a charge for use by a second person of a sleeping car berth.

Case No. 4569 and File No. 548.16.

THURSDAY, the 1st day of October, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Upon its appearing that the sleeping car companies within the United States and upon international movements propose to make a charge of twenty per cent of the regular berth rate for the use thereof by a second person; and railway companies in Canada having applied for permission to make a similar charge for movements within Canada,—

The Board Orders: That the following standard tariffs of sleeping and parlour car tolls, namely:—

Canadian Pacific Railway, C.R.C. No. S25,

Canadian National Railways, C.R.C. No. E.S-31,

be, and the same are hereby, approved; the said tariffs, together with a reference to this order, to be published in two consecutive weekly issues of the *Canada Gazette*.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 47452

In the matter of the Order of the Board No. 46625, dated May 12, 1931, fixing the period of coal movements during the year 1931-1932, from Alberta to Ontario points, to commence July 31, 1931, and to end March 31, 1932, both inclusive, subject to the condition that if the grain movement this fall assumes normal proportions, the movement under the special coal rate will be suspended until after the close of navigation.

File No. 27425.90.

THURSDAY, the 1st day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon its appearing that Order in Council P.C. 1268, dated June 5, 1930, provides that the test movements of Alberta coals authorized by Order in Council P.C. 439, of March 16, 1928, terminating on March 15, 1931, be extended for a further period of one year,—

The Board Orders: That the said Order No. 46625, dated May 12, 1931, be, and it is hereby, amended by striking out the words, "31st day of March," in the sixth line of the operative part of the order and substituting therefor the words, "15th day of March."

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47486

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the toll published in item 2 of Supplement No. 16 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 2 of Supplement No. 16 to Tariff C.R.C. No. 811, approved herein, is 6½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47487

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in items 135-A and 145 of Supplement No. 35 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 135-A and 145 of Supplement No. 35 to Tariff C.R.C. No. 817, approved herein, are as follows:—

Item	Rates in cents per 100 pounds
135-A.	6
145.	13½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47488

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act. File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in items 3-A and 240-A of Supplement No. 16 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 3-A and 240-A of Supplement No. 16 to Tariff C.R.C. No. 856, approved herein, are as follows:—

		Rates in cents per barrel
Item 3-A—		
To Hebron, N.S.		65
Yarmouth, N.S.		55
Kingsport, N.S.		51
		Rates in cents per 100 pounds
Item 240-A—		
From Weymouth, N.S., to Halifax, N.S.		14

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47489

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act. File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 858, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. 858, approved herein, are as follows:—

		Rates in cents per barrel
To Paradise, N.S.		21½
Lawrencetown, N.S.		20
Middleton, N.S.		19
Wilmot, N.S.		16½
Kingston, N.S.		15
Auburn, N.S.		14
Aylesford, N.S.		14
Berwick, N.S.		13
Waterville, N.S.		13½
Cambridge, N.S.		13½

S. J. McLEAN,

Assistant Chief Commissioner.

		From Halifax, N.S.	From Port Williams, N.S.
To Windsor, N.S.	{		
Hantsport, N.S.			
Wolfville, N.S.			
Kentville, N.S.		18	18
Centreville, N.S.			
Canning, N.S.	{		
Kingsport, N.S.			
Coldbrook, N.S.			
Cambridge, N.S.		22	18
Waterville, N.S.			
Berwick, N.S.	{		
Aylesford, N.S.			
Kingston, N.S.			
Middleton, N.S.			
Lawrencetown, N.S.			
Paradise, N.S.	{		
Bridgetown, N. S.		22	22
Annapolis, N.S.			
Clementsport, N.S.			
Deep Brook, N.S.			
Bear River, N.S.	{		
Digby, N.S.			
North Range, N.S.			
Plympton, N.S.			
Weymouth, N.S.			
Church Point, N.S.	{	25	25
Meteghan, N.S.			
Hectanooga, N.S.			
Brazil Lake, N.S.			
Yarmouth, N.S.			

Item No. 60—

The fourth class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47491

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 7th day of October, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.
Hon. T. C. NORRIS, Commissioner.

The Board orders:

1. That the toll published in item 482 of Supplement No. 40 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 482 of Supplement No. 40 to Tariff C.R.C. No. E-4312, approved herein, is 34½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47499

In the matter of the application of the Oshawa Railway Company, hereinafter called the "applicant company," under section 330 of the Railway Act, for approval of Standard Freight Distance Tariff C.R.C. No. 25, on file with the Board under file No. 30728.

THURSDAY, the 8th day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Standard Freight Distance Tariff C.R.C. No. 25, on file with the Board under file No. 30728, be, and it is hereby, approved; the said tariff, together with reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,
Assistant Chief Commissioner.

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UNIVERSITY OF TORONTO
Nov 2 1931

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, November 1, 1931

No. 17

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ORDER No. 47501

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of
the Maritime Freight Rates Act.*

File No. 34822.13

FRIDAY, the 9th day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Supplements Nos. 5 and 6 to Tariff C.R.C. No. 799, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplements Nos. 5 and 6 to Tariff C.R.C. No. 799, approved herein, are as follows:—

<i>To Quebec, P.Q., via Digby, N.S.</i>		Rates in cents per 100 pounds
From		
Windsor, N.S.	}	
to		
Falmouth, N.S.	}	54½
Hantsport, N.S.		55½
Avonport, N.S.	}	
to		58½
Wolfville, N.S.	}	
Port Williams, N.S.		60½
Kentville, N.S.	}	
Mill Village, N.S.		
to	}	
Kingscourt, N.S.		61½
Coldbrook, N.S.	}	
to		
Berwick, N.S.	}	
Aylesford, N.S.		64
to	}	
Wilmot, N.S.		

To Quebec, P.Q., via
Digby, N.S.

Rates in cents per
100 pounds

Brickton, N.S.	}		
to			
Paradise, N.S.			65½
Tupperville, N.S.	}		
to			
Annapolis, N.S.			64
Bridgetown, N.S.	}		
Upper Clements, N.S.			67
to			
Digby, N.S.	}		
North Range, N.S.			68½
to			
Hebron, N.S.	}		
Yarmouth, N.S.			64
Middleton, N.S.			61½
Billtown, N.S.	}		
Lakeville, N.S.			61½
Woodville, N.S.			62
Grafton, N.S.	}		
Somerset, N.S.			64
Weston, N.S.			

1½ cents per 100 pounds to be deducted from normal rate account boat haul.

To Montreal and Drummondville,
P.Q., via Digby, N.S.

Rates in cents per
100 pounds

From		
Billtown, N.S.	}	
Lakeville, N.S.		
Woodville, N.S.		
Grafton, N.S.	}	
Somerset, N.S.		
Weston, N.S.		

1½ cents per 100 pounds to be deducted from normal rate account boat haul.

From other Dominion Atlantic Railway stations to Drummondville via Digby the Montreal normal rates will apply.

Upon apples, carloads, to Saint John, N.B.; Coldbrook, N.B.; Moncton, N.B.; Sackville, N.B.; and Amherst, N.S., via Truro, N.S., the Dominion Atlantic proportion will be reported as follows:—

From	Billed	Normal
Billtown, N.S.		
Lakeville, N.S.	16	19½
Grafton, N.S.		
Somerset, N.S.	17½	21½
Weston, N.S.		

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47519

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 14th day of October, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.

Hon. T. C. NORRIS, Commissioner.

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 49 to Tariff C.R.C. No. E-1237.
 Supplement 36 to Tariff C.R.C. No. E-1240.
 Supplement 7 to Tariff C.R.C. No. E-1251.
 Supplement 28 to Tariff C.R.C. No. E-1255.
 Supplement 15 to Tariff C.R.C. No. E-1258.
 Supplement 16 to Tariff C.R.C. No. E-1258.
 Supplement 10 to Tariff C.R.C. No. E-1504.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47526

In the matter of the application of G. C. Ransom, Chairman, Canadian Freight Association, for permission to make effective October 19, 1931, Supplement No. 23 to Tariff C.R.C. No. 255, to correct typographical error in Supplement No. 22 to Tariff C.R.C. No. 255.

File No. 27612.59

SATURDAY, the 17th day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
 Hon. T. C. NORRIS, *Commissioner.*

Upon its appearing that an error has been made in Supplement No. 22 to Tariff C.R.C. No. 255, by placing the "Lake and Rail" rates in the column headed "All Rail" and the "All Rail" rates in the column headed "Lake and Rail," and it being necessary that the error be rectified without delay,—

The Board orders: That Supplement No. 23 may be issued to Tariff C.R.C. No. 255, correcting the error, effective October 19, 1931, and that reference to this order be shown on the title page thereof.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47541

In the matter of the application of the Michigan Central Railroad Company for permission to make effective upon one day's notice a supplement to Tariff C.R.C. No. 3486, to correct an error in connection with items 690-A and 1460-D.

File No. 27612.60

WEDNESDAY, the 21st day of October, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
 Hon. T. C. NORRIS, *Commissioner.*

Upon its appearing that the application of Willow Grove, Ontario, mileage rates from Hagersville, Ontario, was published upon erroneous information, and it being advisable that the error be corrected without delay,—

The Board orders: That the Michigan Central Railroad Company be, and it is hereby, permitted to issue and file, upon one day's notice, a supplement

to Tariff C.R.C. No. 3486, cancelling the note in connection with items 690-A and 1460-D to the effect that mileage rates from Willow Grove, Ontario, will apply from Hagersville, Ontario, if lower.

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF JULY, 1931

Railway accidents 202, involving 21 persons killed and 194 injured.
Railway accidents at highway crossings 22, involving 4 persons killed and 29 injured.

	Killed	Injured
Passengers.	1	34
Employees.	3	133
Others	21	56
	<u>25</u>	<u>223</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

PRINCE EDWARD ISLAND

- 1 Auto truck—Licence P.E.I.T-263.

NOVA SCOTIA

- 1 Automobile—Nervous condition of auto driver. Licence N.S. 20077.
1 Automobile—Auto driver's vision fixed on cattle in field. Licence N.S. 85-548.
1 Auto truck—Truck ran into pilot of engine. Licence N.S. 13290.

NEW BRUNSWICK

- 1 Auto truck—Licence N.B. C-1691.

QUEBEC

- 1 Automobile—Excessive speed of auto. Licence Que. H-25314.
1 Automobile—Auto driver failed to stop for crossing. Licence Que. 102337.
1 Auto truck—Truck driver left truck foul of track. Licence Que. W-941.
1 Motorcycle—Motorcycle ran into end of flat-car. Licence number not given.
1 Pedestrian.

PROVINCE OF ONTARIO

- 1 Automobile—Auto ran into side of engine; defective brakes. Licence Ont. OC-689.
1 Automobile—Auto stalled on crossing. Licence Ont. K-6820.
1 Automobile—Excessive speed of auto. Licence Ont. UP-963.
1 Automobile—Licence Ont. L-6089.
1 Automobile—Auto ran into side of train. Licence Ont. B-4625.
1 Auto truck—Truck ran into side of train. Licence Ont. 350-89-C.
1 Motorcycle—Motorcycle ran into side of engine. Licence Ont. 1-953.
1 Tricycle.
1 Pedestrian.

PROVINCE OF MANITOBA

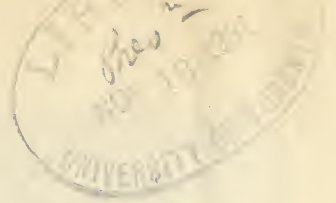
- 1 Automobile—Auto attempted to beat train. Licence Man. 51-864.
1 Automobile—Auto ran into side of train. Licence Man. 47234.

PROVINCE OF SASKATCHEWAN

- 1 Automobile—(No licence).

Of the twenty-two accidents at highway crossings, two occurred at protected crossings and twenty at unprotected crossings. Twenty-one of the accidents occurred during daylight hours and one at night.

OTTAWA, October 19, 1931.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 18

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Application of the Algoma Central and Hudson Bay Railway Company (Express Department), Canadian National Railways (Express Department), Canadian Pacific Express Company, Northern Alberta Railways (Express Department), and Railway Express Agency Incorporated,—per The Express Traffic Association of Canada, for permission to establish on one day's notice a tariff providing a surcharge of 60 per cent of the rate of exchange (when such rate is more than one per cent) on the through express charges (including the charge for valuation, the manifesting fee and advanced charges payable to the United States carriers, but not including the Customs service fee or any special charge for switching when switching is performed in Canada) on shipments between Canada and the United States, in both directions, when such charges are payable and collected in the Dominion of Canada.

File No. 29674.53

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made as follows:—

“On behalf of the express companies operating in Canada—the Algoma Central and Hudson Bay Railway Company (Express Department), Canadian National Railways (Express Department), Canadian Pacific Express Company, Northern Alberta Railways (Express Department), and Railway Express Agency Incorporated—application is hereby made to the Board of Railway Commissioners for permission to establish on one day's notice a tariff providing a surcharge of 60 per cent of the rate of exchange (when such rate is more than one per cent) on the through express charges (including the charge for valuation, the manifesting fee and advanced charges payable to the United States carriers, but not including the Customs service fee or any special charge for

switching when switching is performed in Canada) on shipments between Canada and the United States, in both directions, when such charges are payable and collected in the Dominion of Canada.

"For the twelve months ending July 31, 1931, the total express charges on shipments between the United States and Canada amounted to \$5,185,327.89, the proportion earned and accruing to the United States companies being \$3,100,604.59, or 59.8 per cent.

"These figures include the actual charges on shipments interchanged between the Railway Express Agency in the United States and the Canadian National Express and the Canadian Pacific Express in Canada. The Board will appreciate that the Railway Express Agency does not segregate in its accounts international traffic moving between local points on its lines in Canada and local points on its lines in the United States, and so far as that company's local international traffic is concerned the figures are an estimate based on one month's business taken out specially some time ago. This is the best estimate that can be made at this time, and I might explain to the Board that it would take at least three months to obtain the actual figures covering one month's current traffic. Further, the figures do not include international traffic handled locally over the lines of either the Canadian National Express or the Canadian Pacific Express, as the earnings on such shipments are not segregated in the accounts and are not readily available.

"Under normal conditions express shipments from Canada to the United States are usually forwarded with charges 'to collect,' that is the charges are collected at destination in the United States in United States funds; and this is particularly the case with respect to carload shipments of fish, lobsters, etc., on which the express charges are relatively high. Owing to the existing difference in exchange value between the currency of Canada and of the United States, however, shippers in Canada are taking advantage of the situation and, contrary to their usual custom, are now prepaying the express charges in Canada in Canadian funds. A ruling of the Interstate Commerce Commission requires that payment for the haul of such shipments within United States territory must be in United States funds, and the United States Express Companies have given notice to the Canadian express companies they will require settlement in United States funds.

"It might be pointed out also that shipments from the United States destined to points in Canada are now being sent forward with charges 'to collect.'

"The difficulty could be overcome and the interests of the express companies protected by the express companies in the United States requiring prepayment of express charges on shipments from the United States to Canada, while the express companies in Canada could refuse prepayment of charges on shipments from Canada to the United States. The express companies are of the opinion, however, that a surcharge applied to the through charge, somewhat along the same lines as the plan already in effect for freight traffic, would be more fair to all concerned.

"Inasmuch as the companies in the United States must receive their share of the through charges in United States funds, the companies in Canada feel they must necessarily refuse payment of the charges in Canada unless they are protected by a surcharge, as proposed.

"The Board will recall that in 1921, when a somewhat similar situation existed, the express companies in the United States demanded prepayment of charges on shipments from the United States to Canada. At that time complaints were filed with the Board of Railway Commis-

sioners that this practice was not fair, inasmuch as shippers were called upon to pay the charges in United States funds not only for the United States section of the haul but for the Canadian end as well, and numerous requests were made to the Board that the express companies be directed to accept shipments from the United States to Canada with charges 'to collect' and that the surcharge plan adopted by the railways for freight shipments be extended to apply to express traffic. It should be explained that at that time the express companies in Canada did not find the circumstances such as to require them to refuse prepayment in Canada of charges on shipments destined to the United States.

"At a conference called by the Board and held on July 7, 1921, in Ottawa, it was suggested by the then Chief Commissioner to the express companies that they adopt the freight surcharge plan. However, the express companies then felt that, inasmuch as the average charge on express shipments was small relatively and as there was at that period a preponderance of northbound traffic from the United States to Canada on which the charges were prepaid in United States funds, to waive the requirement for prepayment of charges on shipments from the United States to Canada and to establish a surcharge on the charges collected in Canada, would probably cost the companies more to collect than they would obtain from the surcharge. Settlement between the express companies in the United States and the express companies in Canada was then made in Canadian funds, and at that time the express companies in Canada did not find the circumstances such as to require them to refuse prepayment in Canada of charges on shipments destined to the United States. Conditions have changed since 1921, however, and while the volume of general merchandise traffic has decreased materially, the southbound traffic (on which the express charges are relatively high) has increased.

"No figures are at present available to show the earnings on the carload traffic during 1921, but the express charges on straight carloads of fish and lobsters from Canada to the United States during the twelve months ending August 31, 1931, amounted to \$1,179,849.69 or approximately twenty-three per cent of the total express charges on international shipments (both northbound and southbound). As pointed out above, the charges on this carload traffic are usually collected at destination in the United States in United States funds, but since the value of Canadian currency has depreciated, shippers have changed their practice and are now prepaying the express charges in Canada in Canadian funds.

"I have already advised the Montreal Board of Trade, the Toronto Board of Trade and the Canadian Manufacturers' Association of our intention to file this application for the establishment of a surcharge, and am also sending them a copy.

"The matter is urgent, and I would respectfully ask that the application be given prompt consideration by the Board.

"C. N. HAM, Chairman,
"The Express Traffic Association of Canada."

Judgment of the Board in the matter of the exchange on freight charges payable in respect of international traffic in Canada and the United States, Board's file No. 29674.1, was issued on January 13, 1921. See 10 Board's Orders and Judgments, 479. This sets out in considerable detail the difficulties which arose in connection with the matter of exchange on freight charges, and the necessity and justification of the action therein taken. Reference was made to the difficulty arising in connection with prepayment of freight charges.

The reasoning set out in the judgment aforesaid appears to me to be applicable here.

When the matter of a surcharge in respect of the exchange on freight charges was before the Board, the matter of the express charges was also brought before it, and during the year 1921 requests to have the express charges put on the same basis as was provided for in General Order No. 326 of January 14, 1921, which implemented the judgment in the matter of freight charges, was made by the following parties:—

Winnipeg Board of Trade, Winnipeg, Man., January 17, 1921.

Calgary Board of Trade, Calgary, Alta., January 26, 1921.

Plunkett & Savage, Calgary, Alta., January 28, 1921.

G. E. McIntosh, Officer in Charge of Transportation, Department of Agriculture, Ottawa, Ont., February 3, 1921.

The Cleveland Tractor Company of Canada, Ltd., Montreal, Que., February 25, 1921.

Toronto Type Foundry Company, Toronto, Ont., March 8, 1921.

A. Milne Fraser, Halifax, N.S., March 12, 1921.

United Grain Growers, Limited, Winnipeg, Man., March 21, 1921.

R. Simpson Company, Toronto, Ont., March 20, 1921.

Vancouver Board of Trade, Vancouver, B.C., April 26, 1921; June 21, 1921.

United Typewriter Company, Limited, Toronto, August 4, 1921.

Dominion Traffic Association, Toronto, Ont., October 6, 1921.

Purchasing Agents' Association of Montreal and District, Montreal, Que., December 5, 1921.

The Hamilton Chamber of Commerce, Hamilton, Ont., February 2, 1922.

It was pointed out by the Chief Commissioner at discussions which took place, in regard to express charges, that under the existing arrangements prepayment from Canada to the United States in Canadian funds was accepted, and that settlement between the Canadian and United States companies could be made in Canadian funds, and it was further pointed out that settlement in Canadian funds being acceptable to the American companies, the addition of a percentage as requested would simply increase the payment which the Canadian shipper would have to make.

As pointed out in the application, conditions have now changed. Fish, moving in carload quantities and formerly going forward, collect, recently has been going prepaid in Canadian funds. A communication on file from the Traffic Manager of the Railway Express Agency points out that whereas in previous months carload shipments of fish from Canada to the United States have all moved with charges, collect, during the month of September a considerable portion was forwarded to the United States with charges prepaid in Canada, and for the present month all carloads of fish from Canada to the United States, of which the Railway Express Agency has information, have moved with charges prepaid in Canada.

The situation has, therefore, very much changed from that which existed when the informal application was made in 1921. Further, the Canadian Pacific Express Company and the Canadian National Railways Express Department have been notified by the Railway Express Agency that, owing to the present rate of Canadian exchange, the American Railway Express Agency will require settlement for that portion of the transportation performed by it in the United States in United States funds.

The Canadian companies have power to refuse prepayment in Canadian funds, but it appears that to keep within the legal rights in this respect would tend to dislocate traffic, and it appears to be fairer to obtain a surcharge arrangement which would save the shippers a considerable portion of the exchange.

What is asked for in the present instance is based upon a general average, and it is urged that the general average which has applied in the case of freight should be applied in the present instance. When General Order No. 326 issued, it recited that there had been conferences with representatives of the railway companies and Boards of Trade and Trade Organizations. As pointed out above, there was an informal application in 1921 by those who desired the same practice to apply in the case of express as was made applicable in the case of freight, and there is no reason to believe that those who then applied have changed their opinions.

Communication has been received from the Transportation Adviser of the Board of Trade of Toronto, the Manager of the Transportation Department of the Canadian Manufacturers' Association, and the Manager of the Transportation Bureau of the Montreal Board of Trade. These parties are of opinion that the same principle could properly be applied to the business of express companies as has been applied in the case of freight. The only limitation to this is, that the Board has to be satisfied that the basis of 60 per cent is the proper one to apply.

In the information submitted by the General Accounting Department of the Railway Express Agency, it appears that out of the international traffic for the year ended July 31, 1931, the total express charges are \$5,185,327.89. Of this proportion accruing to the United States company is \$3,100,604.59, working out a total of 59.8 per cent accruing to the American company. The figures herein given are in part computed.

It is set out that in 1921 at the request of the Board of Railway Commissioners for Canada, the Railway Express Agency, or its predecessor, developed actual figures for the month of June, 1921. The percentage which the sum in question bore to the total through charges on international business interchanged for the same month, is worked out, and the same percentage which was worked out on the month in question, which was taken as characteristic, is applied to the known through charges on international business interchanged for the year ended July 31, 1931. The percentage in question is 45 per cent, and this applied to international business local to the Railway Express Agency's lines amounts to \$1,609,239.69. In order to determine the proportion accruing to the American Railway Express Agency in Canada, there was taken the percentage relationship, which the revenue earned in Canada bore to the through charges on business handled entirely by this company internationally and handled by the New York Central lines to Montreal, Quebec, and Ottawa, Ontario, based on monthly computations which the Agency in question makes for the use of the New York Central Railroad System. Applying the average so obtained, the general average arrived at in respect of inter-line traffic between the Railway Express Agency and the Canadian National and Canadian Pacific and the Railway Express Agency local traffic, amounts to a fraction less than 60 per cent.

A special check made by the Canadian Pacific Express Company for the month of July, 1931, shows that the total revenue on traffic to and from the United States, handled by the Canadian Pacific Express Company for the said month was \$124,825.62, and that the proportion earned within Canada by the Canadian Pacific Express Company and connections was \$49,975.26, which is 40.03 per cent.

Recognizing that what is involved is an average, it should be noted that there is a very slight fractional difference between the averages so worked out and the averages asked for. The situation then is, that the Canadian express companies have to earn such additional sums as may be payable to the American Railway Express Agency, in connection with settling the balance due to it, affected as it is by the variation of the money exchange.

I am of opinion that an Order may issue authorizing the issuance on short notice of one day of a Tariff providing for the surcharge in question.

The following sets out the provisions which should be incorporated in the order:—

1. A surcharge will be assessed on the total through charges for all shipments between Canada and the United States when such charges are collected in Canada.

The total through charge will include the charge for valuation, manifesting fee and advance charges payable to United States carriers, but will not include the Customs service fee or special charge for switching when performed in Canada.

The rate of surcharge will be sixty per cent of the rate of exchange arrived at in accordance with paragraph 5.

2. On shipments from Canada the surcharge must be collected at the rate governing on the date the shipment is receipted for.

On shipments from the United States to Canada the surcharge must be collected at the rate governing on the date of arrival at destination in Canada.

3. The surcharge will not be applied to the fee assessed for collecting and remitting proceeds of c.o.d's or collections from the United States collected in Canada.

4. Advice will be sent to express agents in Canada on the last day of each month, specifying the surcharge to be collected from the first to the fourteenth (inclusive) of the following month; and on the fourteenth day of each month, specifying the surcharge to be collected from the fifteenth to the last day (inclusive) of such month.

5. In arriving at the rate of surcharge the rate of exchange quoted for New York funds by the Bank of Montreal at noon in Montreal on the last day of each month will govern from the first to the fourteenth (inclusive) of the following month; while such quotation at noon on the fourteenth will govern from the fifteenth to the last day (inclusive) of each month. Should the governing date fall on a Sunday or Canadian or United States legal holiday, the quotation at noon of the preceding day will govern.

When the rate of exchange is one per cent, or less—no surcharge will be added.

In determining the rate of surcharge when the rate of exchange is more than one per cent, fractions less than one-half will be disregarded, and fractions of one-half or over will be counted as one per cent. Fractional amounts of surcharge less than one-half cent will be dropped; one-half cent or more will be considered one cent.

October 26, 1931.

Commissioner Norris concurred.

GENERAL ORDER NO. 494

In the matter of the application of the Express Traffic Association of Canada on behalf of Express Companies operating in Canada, for permission to publish a tariff upon one day's notice providing for collection of a surcharge in addition to the charges for carriage upon shipments between Canada and the United States when such charges are collected in Canada.

File No. 29674.53

Tuesday, the 27th day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon reading the submissions filed in support of the application and letters from the Boards of Trade of Montreal, Quebec, and Toronto, Ontario, and the Canadian Manufacturers' Association agreeing to the general principle of a surcharge in connection with International Express shipments,—

The Board Orders:

That C. N. Ham, Chairman of the Express Traffic Association of Canada, acting on behalf of express companies operating in Canada, under lawfully filed powers of attorney, be, and he is hereby, permitted to publish and file upon one day's notice a tariff providing for the collection of a surcharge of sixty per cent of the rate of exchange upon express shipments between Canada and the United States, which tariff shall contain the following conditions, namely:—

1. A surcharge will be assessed on the total through charges for all shipments between Canada and the United States when such charges are collected in Canada.

The total through charge will include the charge for valuation, manifesting fee, and advance charges payable to United States carriers, but will not include the Customs service fee or special charge for switching when performed in Canada.

The rate of surcharge will be sixty per cent of the rate of exchange arrived at in accordance with paragraph 5.

2. On shipments from Canada the surcharge must be collected at the rate governing on the date the shipment is receipted for.

On shipments from the United States to Canada the surcharge must be collected at the rate governing on the date of arrival at destination in Canada.

3. The surcharge will not be applied to the fee assessed for collecting and remitting proceeds of c.o.d's or collections from the United States collected in Canada.

4. Advice will be sent to express agents in Canada on the last day of each month, specifying the surcharge to be collected from the first to the fourteenth (inclusive) of the following month; and on the fourteenth day of each month, specifying the surcharge to be collected from the fifteenth to the last day (inclusive) of such month.

5. In arriving at the rate of surcharge the rate of exchange quoted for New York funds by the Bank of Montreal at noon in Montreal on the last day of each month will govern from the first to the fourteenth (inclusive) of the following month; while such quotations at noon on the fourteenth will govern from the fifteenth to the last day (inclusive) of each month. Should the governing date fall on Sunday or Canadian or United States legal holiday, the quotation at noon of the preceding day will govern.

When the rate of exchange is one per cent or less—no surcharge will be added.

In determining the rate of surcharge when the rate of exchange is more than one per cent, fractions less than one-half will be disregarded, and fractions of one-half or over will be counted as one per cent. Fractional amounts of surcharge less than one-half will be dropped; one-half cent or more will be considered one cent.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 47559

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

Saturday, the 24th day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 50 to Tariff C.R.C. No. E-1237
Supplement 8 to Tariff C.R.C. No. E-1251
Supplement 29 to Tariff C.R.C. No. E-1255

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 47574

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

Tuesday, the 27th day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

1. That the toll published in item 150 of Supplement No. 37 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 150 of Supplement No. 37 to Tariff C.R.C. No. 817, approved herein, is 34½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 47575

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

Tuesday, the 27th day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

1. That the tolls published in item 10 of Supplement No. 33 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of those published in the said item 10 of Supplement No. 33 to Tariff C.R.C. No. 783, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Brazil Lake, N.S.	8½
Hectanooga, N.S.	9½
Sigogne, N.S.	10½
Little Brook, N.S.	12½
Weymouth, N.S.	14
Plympton, N.S.	14
Digby, N.S.	15½
Clementsport, N.S.	18½
Annapolis Royal, N.S.	18½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 47598

In the matter of the application of The Express Traffic Association of Canada, for approval of proposed Supplement No. 14 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives, on file with the Board under file No. 1717.12.

Friday, the 30th day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 14 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives, filed by C. N. Ham, Chairman of the Express Traffic Association, on file with the Board under file No. 1717.12, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 47600

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

Saturday, the 31st day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

1. That the tolls published in items 585-A of Supplement No. 40 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 585-A of Supplement No. 40 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

To	Rate in cents per 100 pounds
Edmundston, N.B.	36½
Fredericton, N.B.	30½
Grand Falls, N.B.	36½
Woodstock, N.B.	36½
1½ cents per 100 pounds to be deducted from the normal tolls when reporting account boat haul.	

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 47601

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

Saturday, the 31st day of October, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board Orders:

1. That the tolls published in items 482-A, 525-C, 533, and 573-A of Supplement No. 41 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 482-A, 525-C, 533, and 573-A of Supplement No. 41 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

Item		Rates in cents per 100 pounds
482-A	From St. Stephen, N.B., to Ottawa, Ont.....	36½

Item	Miles		
533	Not over.....	5	6
	Over 5 and not over.....	10	6½
	Over 10 and not over.....	15	6½
	Over 15 and not over.....	20	7½
	Over 20 and not over.....	30	8
	Over 30 and not over.....	40	9
	Over 40 and not over.....	50	10½
	Over 50 and not over.....	60	11½
	Over 60 and not over.....	70	12
	Over 70 and not over.....	80	13
	Over 80 and not over.....	90	14
	Over 90 and not over.....	100	14½

Item		Petroleum and products (except Fuel and Gas Oil in tank cars	Fuel and Gas Oil in tank cars	Rates in cents per 100 pounds
525-C	To			
	Grand Falls, N.B.....	40	38	
	St. Leonards, N.B.			

Item		In boxes or crates	In bundles	
573-A	To			
	Galt, Ont.	145	217½	
	Guelph, Ont.	141	211½	
	Haileybury, Ont.	192	288	
	Hanover, Ont.	155½	233	
	Port Hope, Ont.	130	195	
	St. Thomas, Ont.	152	228	
	Staynerville, Ont.	123	184½	
	Trois Rivières, Que.	120	180	
	1½ cents per 100 pounds to be deducted from the normal rate when reporting account boat haul.			

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 47613

*In the matter of tariffs and supplements to tariffs, filed under the provisions of
the Maritime Freight Rates Act*

File No. 34822.2

Thursday, the 5th day of November, A.D. 1931.

S. J. McLEAN, Assistant Chief Commissioner.

Hon. T. C. NORRIS, Commissioner.

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

- Supplement 15 to Tariff C.R.C. No. E-1233.
- Supplement 30 to Tariff C.R.C. No. E-1234.
- Supplement 48 to Tariff C.R.C. No. E-1235.
- Supplement 51 to Tariff C.R.C. No. E-1237.
- Supplement 3 to Tariff C.R.C. No. E-1702.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 47614

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

Thursday, the 5th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 17 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for said Act would have been effective in lieu of those published in the said Supplement No. 17 to Tariff C.R.C. No. 856, approved herein, are as follows:—

From	Rates in cents per barrel
Windsor, N.S.	62½
Kentville, N.S.	61½
Kingsport, N.S.	65
Weston, N.S.	70
Middleton, N.S.	57
Bridgetown, N.S.	53
Annapolis, N.S.	51½
Clementsport, N.S.	52
Bear River, N.S.	46
Digby, N.S.	45
Bloomfield, N.S.	44½
Plympton, N.S.	33½
Weymouth, N.S.	38
Church Point, N.S.	37
Little Brook, N.S.	35
Parker Eakin's Siding, N.S.	31
Sigogne, N.S.	27
Hectanooga, N.S.	23½
Brazil Lake, N.S.	21½

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER NO. 47615

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

Thursday, the 5th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 9 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for said Act would have been effective in lieu of those published in the said Supplement No. 9 to Tariff C.R.C. No. 851, approved herein, are as follows:—

From	Rates in cents per 100 pounds
Mount Uniacke, N.S.	12
Hartville, N.S.	13½
Dimocks, N.S.	15
Mosherville, N.S.	16
Clarksville, N.S.	17
Doddridge, N.S.	18
Green Oaks, N.S.	19
Lower Truro, N.S.	18
Falmouth, N.S.	15
Horton Landing, N.S.	16
New Minas, N.S.	17
Hillaton, N.S.	18
Kingsport, N.S.	19
Turner Road, N.S.	18
Chute Road, N.S.	19
Weston, N.S.	19½
Waterville, N.S.	18
Auburn, N.S.	19
Ruggle's Road, N.S.	19½
Tupperville, N.S.	20
Deep Brook, N.S.	22
North Range, N.S.	23½
Church Point, N.S.	25
Lake Annis, N.S.	25½
Yarmouth, N.S.	26½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47616

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of
the Maritime Freight Rates Act*

File No. 34822.13

THURSDAY, the 5th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the toll published in item 166 of Supplement No. 18 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 166 of Supplement No. 18 to Tariff C.R.C. No. 856, approved herein, is 30½ cents per 100 pounds, 1½ cents per 100 pounds to be deducted on account of boat haul.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47617

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of
the Maritime Freight Rates Act*

File No. 34822.13

THURSDAY, the 5th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

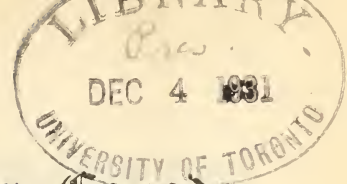
The Board orders:

1. That the toll published in item 155-A of Supplement No. 40 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 155-A of Supplement No. 40 to Tariff C.R.C. No. 817, approved herein, is 7 cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.



The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 47621

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, for authority to open for the carriage of traffic their line between mileage 35 and 37.5, Beachburg Subdivision, through the Township of Fitzroy, in the Province of Ontario.

File No. 3561.216

MONDAY, the 9th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic their line between mileage 35 and 37.5, Beachburg Subdivision, through the township of Fitzroy, province of Ontario.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47622

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of the temporary deviation of their Alexandria Subdivision from mileage 44.2 to 44.78.

File No. 37131.5

MONDAY, the 9th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic the portion of the temporary deviation of the Alexandria Subdivision between mileage 44.2 and 44.78.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47637

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 10th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the toll published in item 25 of Tariff C.R.C. No. 864, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 25 of Tariff C.R.C. No. 864, approved herein, is 18 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47638

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, and Order of the Board No. 47491, dated October 7, 1931.

File No. 34822.12

TUESDAY, the 10th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon its appearing that an erroneous normal toll was certified in the said Order No. 47491, dated October 7, 1931, in connection with item 482 of Supplement No. 40 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company,—

The Board orders: That the figures “34½” appearing in the fourth line of section 2 of the said order be struck out and that in lieu thereof the figures “28½” be substituted.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47645

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the “Applicant Company,” under Section 276 of the Railway Act, for authority to open for the carriage of traffic portions of its Thompson Subdivision as revised between mileages 25·3 and 62·1.

File No. 22129.7

TUESDAY, the 10th day of November, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic portions of its Thompson Subdivision as revised between mileages 25·3 and 31·2, 35·4 and 38·1, 39·6 and 40·6, 54·5 and 56·8, 58·9 and 60·6, and 61·8 and 62·1.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47627

In the matter of the application of Samuel B. Humford and H. Hanson, of the settlement of Rochester, Alberta, and Louis Cristal and Jack Cristal, of the settlement of Perryvale, Alberta, hereinafter called the "Applicants," for an Order directing the Canadian National Railways to file a new tariff reducing the freight charge on sand handled between Rochester and/or Perryvale, to Edmonton, Alberta, from \$1.25 a cubic yard to \$1 a cubic yard.

File No. 25705.12

THURSDAY, the 12th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Edmonton on October 10, 1931, in the presence of representatives of the applicants and the railway company, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47682

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of the following items as shown in Supplement No. 2 to Canadian Freight Classification No. 18, submitted for approval February 21, 1931, which were eliminated when the said supplement was approved by Order No. 46784, dated 10th of June, 1931, for the reasons set out in Judgment of the Board in connection therewith dated May 27, 1931: Page 14, Items 3 and 4; Page 14, Items 17, 18, and 19; Page 18, Items 24, 25, 26, and 27; Page 21, Items 16 and 17.

File No. 33365.85.7

TUESDAY, the 17th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Regina, on November 2, 1931, in the presence of representatives of the Saskatchewan Traffic Council, representing the Wholesale Hardware Distributors of the Province of Saskatchewan, and the Canadian Freight Association, and what was alleged,—

It is ordered: That the following items as shown in the said supplement, with respect to pipe or pipe connections shipped with barn and stable fittings, pumps and windmills, namely, page 14, items 3 and 4; page 14, items 17, 18, and 19; page 18, items 24, 25, 26, and 27; and page 21, items 16 and 17, be, and they are hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47689

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 19th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, as follows, namely:—

Supplement 24 to Tariff C.R.C. No. E-1243,
 Supplement 25 to Tariff C.R.C. No. E-1243,
 Supplement 32 to Tariff C.R.C. No. E-1244,
 Supplement 18 to Tariff C.R.C. No. E-1247,
 Supplement 19 to Tariff C.R.C. No. E-1250,
 Supplement 52 to Tariff C.R.C. No. E-1257,
 Supplement 23 to Tariff C.R.C. No. E-1259,
 Supplement 11 to Tariff C.R.C. No. E-1504,
 Supplement 4 to Tariff C.R.C. No. E-1702,

subject to the provisions of subsection 2 of section 3 of the said Act.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47691

In the matter of the application of the Canadian National Railway Company under Section 19 of the Statutes of Canada, 9-10 George V, Chapter 13, for an Order recommending to the Governor in Council the abandonment of the operation of the Alvinston Subdivision of its railway, and to dismantle this line.

File No. 22586.1

FRIDAY, the 20th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the application and what is alleged in support thereof, the petitions, resolutions, and representations filed in objection thereto, the further written submissions by the railway company and parties in reply and answer; and upon the reports of its Chief Operating Officer and Assistant Chief Traffic Officer,—

The Board recommends for the approval of the Governor in Council that the Canadian National Railway Company be permitted to abandon the operation of the Alvinston Subdivision of its railway, except that portion northwest of Glencoe to Gillis Siding, a distance of 4.22 miles, and to dismantle the same.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47693

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Estevan-Forward Branch from mileage 0·0 to 6·10.

File No. 13815.28

FRIDAY, the 20th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby authorized to open for the carriage of traffic a portion of its Estevan-Forward Branch from mileage 0·0 to 6·10.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH
OF AUGUST, 1931

Railway accidents242, involving 20 persons killed and 241 injured
Railway accidents at highway crossings.... 18, involving 7 persons killed and 26 injured

	Killed	Injured
Passengers..	—	40
Employees..	3	161
Others..	24	66
	<u>27</u>	<u>267</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

QUEBEC

- 2 Automobile—Auto ran into side of train. Que. licence 82528; Vermont licence 33563.
1 Automobile—Auto driver failed to stop for crossing. Que. licence L-7298.
1 Automobile—Excessive speed of auto. Que. licence H-856.

ONTARIO

- 3 Automobile—Auto ran into side of train. Ont. licences MS-4, 6739, V-8953.
1 Automobile—Auto driver attempted to beat train. Mich. licence 392-925.
4 Automobile—Ont. licences HW-798, T-286, F-3024; one auto licence number not given.

MANITOBA

- 1 Automobile—Man. licence 64,238.
1 Tractor.

SASKATCHEWAN

- 1 Auto Truck—Sask. licence T-3978.

ALBERTA

- 1 Automobile—Auto stalled on crossing. Sask. licence 75261.
1 Automobile—Defective brakes on auto. Alta. licence 33559.
1 Pedestrian.

Of the eighteen accidents at highway crossings, two occurred at protected crossings and sixteen at unprotected crossings. Nine of the accidents occurred during daylight hours and nine at night.

OTTAWA, November 13, 1931.

STANLEY, J. H. (1904) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1905) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1906) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1907) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1908) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1909) The life history of the
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 special reference to its economic importance.

STANLEY, J. H. (1910) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1911) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1912) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1913) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1914) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1915) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1916) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.

STANLEY, J. H. (1917) The life history of the
 black fly, *Simulium vittatum* (Say), with
 special reference to its economic importance.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, December 15, 1931

No. 20

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Application of the Brock Company (Western) Limited, Calgary, Alberta, for an Order directing the inclusion of blankets, cotton or cotton shoddy, pillow cases, sheets and towels in mixed cars with cotton piece goods at the carload rating applying on cotton piece goods from Eastern Canadian points to Calgary, Alta.

File No. 37929

JUDGMENT

By the Board:

Cotton piece goods in carloads are rated 4th class in Canadian Freight Classification No. 18. The classification stipulates that the rating for cotton piece goods applies only on woven cloth made wholly of cotton, in the original piece or in mill and remnants, and does not apply on partially or wholly manufactured articles. Blankets, cotton or cotton shoddy, pillow cases, sheets and towels are not provided with carload rating in the Canadian Freight Classification, the only provision therefor being the L.C.L. rating of 1st class under an item reading "Dry Goods, Not Otherwise Indexed by Name."

Applicant asks for the inclusion of blankets, pillow cases, sheets and towels in mixed cars with cotton piece goods at the carload rating applying on cotton piece goods from eastern Canadian points to Calgary; in other words, it is desired that the carload rating provided for cotton piece goods also apply on L.C.L. quantities of the other articles named when mixed with and shipped in a car with cotton piece goods.

The general heading "Dry Goods" in the Canadian Freight Classification covers a very wide range of articles, and of these, carload ratings have only been accorded on some of the cheaper, coarser and heavier descriptions of goods commonly handled by dry goods dealers and which do move in straight carload quantities, for example, cotton piece goods, bags and bagging, burlap, carpets or carpeting made of cork, linoleum and oilcloth, carpet lining, mats and matting, oilcloth (not floor). The articles mentioned in this application, and many others of an analogous character, rarely move in straight carload quantities and have never, in Canada or the United States, been provided with a carload rating in the freight classification.

In 1906 the Winnipeg Board of Trade made application to the Board for an order requiring the railway companies to provide a carload rating on blankets, all kinds, knitted underwear, batting and wadding, comforters, and wool socks. The application was refused. In 1909, by Order No. 6815, dated February 1, the Board dismissed the application of the Winnipeg Jobbers and Shippers' Association for a carload rating on blankets from points in Eastern Canada to Winnipeg. By Order No. 18944, dated April 1, 1913, an application of the Montreal Board of Trade for an order requiring flannelette sheets to be added to the Dry Goods List of the Canadian Freight Classification at the same ratings as provided for "Cotton Piece Goods," namely, L.C.L. 2nd class and C.L. 4th class, was refused.

Among other reasons for the decisions in these cases, the Board stated that dry goods, as a whole, might bear higher rates than charged without increasing their cost to the consumer; that by assessing rates according to the value of the service, the movement of low grade commodities is made possible, which could not always be the case were the cost of service alone considered, and any needless reductions on the more valuable descriptions of traffic, which are not commonly shipped in carload lots, must necessarily tend to an increase in the rates on the cheaper commodities which cannot be moved long distances at higher rates than are now charged. It will, therefore, be noted that the principle of establishing carload ratings on articles of dry goods such as here under consideration, or analogous thereto, has been in issue before the Board on three previous occasions.

In the present case, applicant alleges discrimination against Calgary and in favour of Vancouver with respect to the articles here in question. While, as already pointed out herein, there is no carload rating in the classification for blankets, pillow cases, sheets and towels and all shipments of these articles throughout Canada (except to the British Columbia coast) are assessed L.C.L. rates, there is an exception—not by classification provision, but by the terms of a special competitive tariff—in the case of shipments from eastern Canadian points to British Columbia coast points. The tariff in question (Canadian Freight Association, C.R.C. No. 466) is one publishing competitive west-bound transcontinental freight rates on various specific commodities from eastern Canadian points of origin to British Columbia coast destinations. The rates in this tariff are much lower than the regular or normal rates under the provisions of the freight classification and class rate tariffs and have always been considered of a highly competitive nature, being related to the rates on the same or similar commodities established from eastern United States points to Pacific coast points as well as rates put in to meet special competitive conditions, i.e., water competition or market competition. The normal rate on cotton piece goods in carloads from eastern Canadian points (Montreal and west) to Vancouver is \$2.81½ per 100 pounds; the special competitive rate is \$1.77½. Further, the normal rate between the same points on blankets, pillow cases, sheets and towels is \$5.52½ per 100 pounds, but these articles may under this special competitive tariff be included with cotton piece goods at the \$1.77½ rate. With this exception, the classification ratings and normal class rates apply throughout Canada, which, in the case of Calgary, makes the rate on cotton piece goods in carloads \$2.34½, and on the other articles named the L.C.L. rate of \$4.59½ applies as compared with the L.C.L. competitive rate to Vancouver of \$3.27. It will thus be observed that under the special competitive rate to Vancouver blankets, pillow cases, sheets and towels may be included with cotton piece goods at the carload rating applying thereon, while to Calgary, where the normal rate basis applies, this is not permitted.

The position taken by the railway companies is summarized in the following extract from their written reply to the application:—

"This application for carload rating on articles that never moved in straight carloads is apparently based on the fact that a regulation similar to that proposed now applies on traffic for Vancouver and other British Columbia Pacific coast points. The Board, as well as the Brock Company, are undoubtedly well aware of the reasons why the railways have found it necessary to establish certain rates and carload mixtures on traffic to British Columbia coast points, and it is understood by the railways, as well as the Board, and practically all Canadian manufacturers and receivers that rates or carload mixtures that may be established to British Columbia coast points are in no way a precedent for similar rates or mixtures to intermediate points. There is no carload rating established in the Canadian Freight Classification for the articles mentioned, and they have always moved as dry goods, at the first class, any quantity rate, not only in Canada, but in the United States as well.

"The railways must oppose most vigorously the granting of this application, which in reality means that they are asked to transport an L.C.L. shipment at a low carload rating. If this application were granted, we would, no doubt, be flooded with similar applications of different mixtures to suit the convenience of other receivers in the west, which would deprive the railways of revenue that they cannot afford to sacrifice."

The rate situation above illustrated exists not only with respect to the articles here under consideration, but also on a wide variety of other commodities of various descriptions. The Board has never heretofore considered the circumstances surrounding the publication of these competitive rates and mixtures as establishing a precedent for similar rates or mixtures to intermediate points not affected by this special competitive situation. It may be here pointed out that applicant does not ask for the establishment of the Vancouver rate as maximum to Calgary, but only requests that L.C.L. quantities of the blankets, pillow cases, sheets and towels be permitted inclusion with carloads of cotton piece goods to Calgary at the carload rating applying thereon, namely, \$2.34½, as compared with the competitive rate of \$1.77½ to Vancouver, but while the application is thus modified, nevertheless what is being requested is that the Calgary rate be influenced, modified and reduced because of the existence of the competitive rate to Vancouver, so that in principle the Board is asked that the Calgary rate be reduced as a result of the competitive rate established under the conditions referred to.

The issue here presented to the Board is by no means a new one. It was developed and argued at length before the Board in the General Freight Rates Investigation pursuant to Order in Council P.C. No. 886 of June 5, 1925, and in its judgment therein the Board stated:—

"As far as concerns three of the above enumerated features of our present rate system—namely, Transcontinental Rate Scale, Terminal Tariffs, and the different Standard Mileages, east and west—I am of opinion that no reasons have been urged sufficient to make it advisable that the same should be eliminated or altered, as asked by various petitioners. They have been discussed individually in different rate judgments. Their origin and the reasons for their establishment and maintenance have been frequently explained and in my view such reasons stand as a justification for the continuance of these existing features of our rate system substantially unimpaired. It is, I think, unnecessary to bring into this discussion a reiteration of what has been previously decided concerning them. The Transcontinental Rate Scale has a very definite purpose, and one which should be commended rather than criticized. While it gives rise to some anomalies, nevertheless such are not by any means to prevail against the benefit of the system as a whole.

It is true that some localities east of Vancouver are compelled to pay on certain commodities transportation rates greater than those charged for long haul; but the real issue in that regard is whether the charge for the short haul is reasonable and fair. The two sets of rates are based on different principles, as is well recognized, and are not to be judged by the same standard.

"Transcontinental carriage of freight has been much affected by reason of the cheaper, although much more lengthy and circuitous water route furnished by the Panama canal. In instances wherein rapid delivery is not essential, the competition of the latter route is most formidable. The establishment of this route has deprived railways of much traffic, and wherever they can meet such competition by making low transcontinental rates, they should be encouraged to do so, and schedules framed for that purpose should not be disturbed.

"A criticism of some force, however, developed through the complaint that by reason of the transcontinental rate to Vancouver and the rate eastward therefrom, certain distributors in Alberta find themselves at a disadvantage as compared with distributors in Vancouver. The instances of such were impressive and are not to be met by alteration or elimination of the transcontinental rate. They do not touch the principle of transcontinental rates, which under present conditions needs no justification."

In written submission subsequent to the hearing of this case at Calgary, applicant makes reference to the rate and mixtures applicable on cotton and cotton commodities from New York to Spokane, Wash. There is a long line of decisions of this Board dealing with rate comparisons between points in the United States as bearing on the reasonableness of rates between points within Canada, and the Board has uniformly held that it must find its criteria of the reasonableness of the Canadian rates within Canada; that comparisons between rates in the United States and those in Canada, while informative, are not conclusive and have no necessary conclusive bearing on the reasonableness of rates in Canada—*Manitoba Dairymen's Association vs. Dominion and Canadian Northern Express Companies*, 14 C.R.C., p. 149; *in re Telegraph Tolls*, 20 C.R.C. 1, at p. 6; *Riley vs. Dominion Express Company*, 17 C.R.C. 112, at p. 115; *Application of the Consumers Glass Company, Limited*, Montreal, Vol. 17, Board's Judgments, Orders and Rulings, 726, at p. 732.

Applicant states that the Calgary jobber is placed in an unfair position owing to the fact that the Vancouver jobber can ship back into Calgary distributing territory on a lower rate basis. For example, the Vancouver jobber can ship blankets, etc., from Vancouver to Calgary at a rate of \$2.19, which, added to the competitive rate of \$1.77½ when shipped in carloads to Vancouver, makes a combination of \$3.96½ as compared with the rate from Montreal to Calgary of \$4.59½. Of course, the same combination of rates is available to the Calgary jobber if he chooses to handle traffic in the same way. There is, however, nothing before the Board on the record in this case showing whether the Vancouver jobber is actually shipping these articles back into Calgary or the Calgary distributing territory, or whether the business is actually being done by the Calgary jobber; in other words, no evidence was adduced showing that applicant has actually been subjected to any detriment from the difference in rate. If the railway companies cancelled the competitive rate to Vancouver it would remove the applicant's case as it was presented on this record, but it is not shown that such action by the railway companies would be of any real benefit to the applicant as eliminating his alleged rate discrimination, because so long as there is effective water competition from Montreal to Vancouver via the Panama canal, the Vancouver jobber would have the rate advantage complained of regardless of the action of the railway companies.

The applicant, located at Calgary, is the only wholesale dry goods dealer who has raised the issue here presented and suggests that Calgary is the only point interested, stating in letter dated November 2: "We would like to point out that Calgary practically stands alone in regard to the unfair competition from Vancouver. Even Edmonton is not in the same unfair position as we are as a distributing centre." It appears quite obvious, however, from a study of the rate situation that the matter cannot be dealt with solely from the standpoint of the rate to Calgary; that to do so would simply remove the complaint from Calgary and create complaints at other points. If Calgary is in an unfair position, it is not apparent why Edmonton and other points are not similarly affected. The present rate from Montreal to both Calgary and Edmonton is \$4.59½. The combination of rates to and from Vancouver is \$3.96½ to Calgary and \$4.26½ to Edmonton. Applicant at Calgary applies for a reduction in rate from \$4.59½ to \$2.34½ on blankets, pillow cases, sheets and towels from Montreal to Calgary, suggesting no change in rate to other points. With a rate of \$2.34½ to Calgary as applied for, and the present rates being unchanged to other points, these articles could be shipped into Edmonton by the Calgary dealer at a combination rate of \$3.23½ (\$2.34½ Montreal to Calgary; plus 89 cents Calgary to Edmonton), as compared with direct shipment from Montreal to Edmonton at \$4.59½, and if the Edmonton jobber attempted to compete in Calgary with the Calgary jobber his freight cost would be \$5.48½ (\$4.59½ plus 89 cents). Other examples of distribution by the Calgary and Edmonton jobbers made up on the same basis would be:—

TO CAMROSE, ALTA

Distribution through Calgary..	\$3.18½
Distribution through Edmonton..	\$5.01½

TO RED DEER, ALTA

Distribution through Calgary..	\$2.91½
Distribution through Edmonton..	\$5.19½

Edmonton is not the only jobbing distribution centre that would be affected. For example, in connection with distribution through Regina to Swift Current, Sask., 152 miles from Regina and 315 miles from Calgary, the situation would be:—

Distribution through Calgary..	\$3.50½
Distribution through Regina..	\$4.35½

Further, with the establishment of rate of \$2.34½ to Calgary as applied for, is it logical to suppose that other points as far east as Winnipeg would not immediately apply for corresponding reductions in view of the fact that the present rates from Montreal to such points are:—

To Winnipeg, Man.	\$2.67½
To Brandon, Man.	3.04½
To Regina, Sask.	3.58½
To Moose Jaw, Sask.	3.69½
To Saskatoon, Sask.	3.85½

The Railway Act has express provisions permitting the establishment of competitive rates which will not be subject to the long and short haul clause, i.e., that greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction.

"The Railway Act contains specific provisions authorizing a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates, and it has been held in numerous decisions of the Board that comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates *per se*." (Application of the Mount Royal Milling Co., Board's printed Judgments, Orders, Regulations and Rulings, page 49, Volume 15.)

"So far as water competition is concerned, it has been recognized over and over again in various decisions of this Board that the extent to which water competition shall be met is in the discretion of the railway. The Board has also held that it is not the privilege of the shipper to demand less than normal rates because of such competition, unless the railway, in its own interest, chooses to meet it. This principle of water competition has also been recognized practically by all rate-regulating commissions." (Canadian Oil Cos. vs. G.T., C.P., and C.N.R. Cos., 12 C.R.C. 351; and Blind River Board of Trade Case, 15 C.R.C. 146.)

"The Board has also held that it is in the discretion of the railway whether it shall or shall not make rates to meet the competition of markets. The same principle applies here as in the case of water competition." (Montreal Board Produce Merchants' Association vs. G.T.R. and C.P.R. Cos., 9 C.R.C. 232; and B.C. Sugar Refining Co. vs. C.P.R., 10 C.R.C., 171.)

It is clear from what has been above set out that to prescribe, because of the special competitive rate situation existing at Vancouver, a revised rate adjustment to points in the Prairie Provinces where such competitive situation does not exist, would not only be a departure from the provisions and interpretations of the Act which has always been recognized by the Board, but would also have a very far-reaching effect; it could not be confined in the manner suggested by applicant; and whatever action was taken with respect to the commodities here under consideration would establish a principle affecting a wide range of other articles.

Upon careful consideration of the record, the Board is of the opinion that the application should be refused.

A. D. CARTWRIGHT,
Secretary, B.R.C.

OTTAWA, ONT., November 18, 1931.

ORDER No. 47725

In the matter of the application of the Brock Company (Western) Limited, Calgary, Alta., for an Order directing the inclusion of blankets, cotton or cotton shoddy, pillow cases, sheets, and towels in mixed cars with cotton piece goods at the carload rating applying on cotton piece goods from Eastern Canadian points to Calgary, Alta.

File No. 37929

MONDAY, the 23rd day of November, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, October 29, 1931, in the presence of representatives of the Brock Company (Western) Limited, and the Canadian Freight Association, and what was alleged; and upon reading the further submissions filed,—

The Board orders: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Application of the Battleford Board of Trade, Battleford, Sask., for interchange facilities at Battleford between the Canadian National and Canadian Pacific Railways.

File No. 6713.235

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

This is an application of the Battleford Board of Trade for interchange facilities between the Canadian National and Canadian Pacific Railways at Battleford, Sask.

The jurisdiction of the Board to order interchanges is to be found in section 253 of the Railway Act. Under this section a municipal corporation, or other public body, or any person or persons interested, may apply for an interchange "in any case in which the tracks or lines of two different railways run through or into the same city, town or village," and in such a case the Board is authorized to order such lines or tracks to be connected.

The Canadian Pacific Railway Company owns no lines of railway running through or into the town of Battleford.

As the conditions upon which the Board is authorized to make an order do not exist in this case, the order must be refused.

November 21, 1931.

Commissioner Stoneman concurred.

ORDER No. 47726

In the matter of the application of the Battleford Board of Trade, Saskatchewan, for interchange facilities at Battleford between the Canadian National and Canadian Pacific Railways.

File No. 6713.235

TUESDAY, the 24th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in North Battleford, October 8, 1931, in the presence of counsel for the Battleford Board of Trade, the Canadian National Railways, and the Canadian Pacific Railway Company, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

Application of the Municipal Council of the City of North Battleford, Sask., for an Order setting aside an agreement between the Canadian Pacific Railway Company and the Canadian National Railway Company, in so far as said agreement affects the construction of the extension of the Canadian Pacific Railway Company's Sonningdale Line into North Battleford.

File No. 30356.13

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

This is an application of the Municipal Council of the City of North Battleford, Sask., for an order setting aside an agreement between the Canadian Pacific

Railway Company and the Canadian National Railway Company, in so far as the said agreement affects the construction of the extension of the Canadian Pacific Railway Company's Sonningdale Line into North Battleford.

By Chapter 65, Statutes of Canada, 1929, the Canadian Pacific Railway Company was given authority to construct certain lines of railway, including many others,—

"(g) From a point on the Asquith-Cloan branch of the Canadian Pacific Railway in or near township thirty-nine, forty, or forty-one, range twelve, thirteen, fourteen or fifteen, west of the third meridian, thence in a generally northwesterly direction to North Battleford, thence in a generally northerly direction to a point at or near Meadow Lake, in township fifty-eight or fifty-nine, range sixteen or seventeen, west of the third meridian, all in the province of Saskatchewan."

On February 19, 1929, the two railway companies entered into the agreement complained of. This agreement relates to the future construction of railways in northern Saskatchewan by the two companies, and was entered into expressly for the purpose of avoiding the duplication of lines. The portion of the agreement respecting the Sonningdale-Meadow Lake Branch, which is complained of, reads as follows:—

"4. BATTLEFORD NORTH AREA

"The Canadian National will not oppose the Canadian Pacific's application for authority to construct its Sonningdale-Meadow Lake Branch; provided that in order to avoid duplication of lines through Battleford and North Battleford and from the latter point to a point in the vicinity of Medstead the parties agree as follows:—

"The Canadian Pacific will not oppose the Canadian National's Bill for a branch line from a point near Hamlin to a point near Medstead. The Canadian National will commence the construction of such line within one year and complete the same within two years from this date, and will grant the Canadian Pacific joint and equal rights in perpetuity over its existing line from North Battleford and the line so to be constructed to a point near Medstead on the same terms as the grant by the Canadian Pacific of joint and equal rights over its line between Lorraine and Youngstown or Dobson, referred to in paragraph 5 hereof. Furthermore, the Canadian National will grant to the Canadian Pacific running rights over its line between Battleford and North Battleford and will either sell to the Canadian Pacific or grant it running rights over either or both of its existing lines between Oban and Battleford and between Carruthers and Battleford or such portions of these latter two lines as the Canadian Pacific may desire. The Canadian Pacific will request that the provisions of its Bill with respect to its Sonningdale-Meadow Lake Branch be amended to the effect that, in the event of such joint and equal rights and such running rights being granted and sale being made (if the sale of either of the lines mentioned be agreed upon), its authority to construct shall apply only from the point near Medstead to Meadow Lake; and the Canadian National will obtain the necessary authority to enable it to grant such rights and make such sale. It is understood that in the event of the Canadian National not commencing its said line from Hamlin to Medstead within one year or not completing it within two years from the date hereof, then the Canadian Pacific shall have the right to construct the same, according joint and equal rights to the Canadian National."

The Canadian National Railway Company has carried out this provision of the agreement on its part, by constructing the line from Hamlin to Medstead,

and granting the Canadian Pacific Railway Company running rights over this line, as well as over the other lines agreed upon.

What the Municipal Council of North Battleford now asks is, that the Canadian Pacific Railway Company be released from its obligations under the agreement. The Canadian Pacific Railway Company itself could never ask for such relief, and it would be an extraordinary situation if such relief could be obtained through the intervention of a third party. Even if the agreement were executory, and the Board had jurisdiction in this matter, it would be impossible for the Board to say that the provision of the agreement complained of was not in the public interests generally, even if opposed to the particular interests of North Battleford.

The Board, however, clearly has no jurisdiction to make the order asked for. Section 35 of the Railway Act is the only section which gives the Board jurisdiction respecting agreements, and that jurisdiction relates only to the enforcement of agreements at the instance of one of the contracting parties.

The application will be dismissed.

November 21, 1931.

Commissioner Stoneman concurred.

ORDER No. 47727

In the matter of the application of the Municipal Council of the City of North Battleford, Sask., for an Order setting aside an agreement between the Canadian Pacific and the Canadian National Railway Companies, in so far as said agreement affects the construction of the extension of the Canadian Pacific Railway Company's Sonningdale Line into North Battleford.

File No. 30356.13

TUESDAY, the 24th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in North Battleford, October 8, 1931, in the presence of counsel for and representatives of the City of North Battleford, the Battleford Board of Trade, the Canadian National Railways, and the Canadian Pacific Railway Company, and what was alleged; and upon reading the further submissions filed,—

The Board orders: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Application of the Rock Springs Coal and Brick Company and the Rock Springs Mine, Limited, for an Order requiring the Canadian Pacific Railway Company to furnish siding service at Elcan, Alberta.

File No. 18838.1

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

The applicants complain that the Canadian Pacific Railway Company has failed to furnish service to their mine at Elcan, Alta., under the terms of its siding agreement with the applicants, dated September 24, 1909. Prior to the

making of the agreement in question, the railway company had built a spur extending from a point on its Taber Subdivision, 2.32 miles to a ballast pit. A spur was built from a point on the ballast pit spur to the applicant's mine, a distance of 0.64 miles. The railway company continued to operate the ballast pit until 1920, when the pit became exhausted.

Through the years up to 1927, the railway company had difficulty in collecting from the mining company the rent and maintenance accruing from time to time under the agreement. In 1927 the sum of \$196.12 was owing on this account. The railway company finding that it could not collect this amount from the mining company, and that no coal was being shipped, on October 15, 1927, spiked the switch and informed the mining company that it would furnish no further service until the amount owing had been paid.

In 1928, one Hughes, who in the meantime had become the lessee of the mining company, approached Mr. Halkett, the divisional superintendent of the railway company, with a view to having the two spur lines put in shape for the operation of trains. These spurs had practically been out of use for about two years, and the railway company estimated that it would cost \$1,600 to repair the ballast spur and \$800 to repair the mine spur.

Hughes represented that he was going to ship 200 cars of coal a month and would repay at the rate of \$4 per car the amount that the railway company would have to expend to repair the ballast spur. He also agreed to pay in cash the amount required to repair the mine spur.

About the same time, one Bullock, acting on behalf of the mining company, assured Mr. Halkett that Hughes was a good man, that he could rely on all he said, and that Mr. Hughes' estimate of the business of 200 cars a month was understated if anything.

The railway company proceeded to repair the ballast spur at a cost of \$1,676.89. After this work was done, the railway company called upon Hughes for the \$800 required for the repair of the mine spur, but Hughes was unable to pay. Bullock, however, paid \$300 on account and guaranteed the balance. The work on the mine spur was completed in November, 1928, at a cost of \$837.05.

In place of the promised 200 cars per month, there were shipped over these spurs in the winter of 1928-29 and 1929-30 only twenty-five cars in all. The mine was then closed down until this year. At the present time the mining company owe the railway company for rental, maintenance and the balance guaranteed, the sum of \$766.93; and besides, the railway company is out of pocket the sum of \$1,676.89 expended on the repair of the ballast spur.

The mining company now ask for service for their mine, and the railway company estimates that it will cost \$1,500 to repair the ballast spur, and \$700 to repair the mine spur. The railway company takes the position that before an order requiring it to furnish service to the mining company should be made, the company should pay all moneys owing, including the moneys required to repair both spurs.

There can be no doubt whatever that under the siding agreement, so long as the mining company fulfilled the terms of the agreement on their part, they were entitled to service, and were under no obligation to make any repairs to the ballast spur. They, however, failed to carry out the terms of their agreement.

The mining company now put forward a new company called The Rock Spring Mines Limited as the operator of the mine and say that this company is prepared to work the mine with every prospect of doing a successful business. The evidence shows that the new company is really one Stephen Sears. It appears that Sears had loaned the mining company \$2,400 on the security of a chattel mortgage, and not being able to realize his money, early in October he incorporated a company with a nominal capital of \$20,000 and made himself

president and managing director. No shares in this company, except qualifying shares, have ever issued. Under the circumstances, if the Board were to order the railway company to put these spurs in shape for business, it looks very much as if the story of 1928 would be repeated.

An order will go requiring the railway company to furnish service to the mining company on the following conditions:—

1. That the mining company within two months from the date of this order pay the railway company \$3,143.82, made up as follows:—

Balance of account due railway company.....	\$ 766 93
Amount thrown away on 1928 repair of ballast spur.....	1,676 89
Amount required to repair mining spur.....	700 00
	<hr/>
	\$3,143 82

2. That the mining company within two months from the date of this order pay into some chartered bank to the credit of this board the sum of \$1,500, being the amount required to repair the ballast spur; such sum to be held by the Board until such time as it is satisfied that the application of the mining company is bona fide and justified by the business. In the event of failure of the mining company to so satisfy the Board this amount, or so much as may have been expended by the railway company in the repair of the ballast spur, is to be paid to the railway company.

November 21, 1931.

Commissioner Stoneman concurred.

ORDER No. 47740

In the matter of the application of the Rock Springs Coal and Brick Company, Limited, and the Rock Springs Mine, Limited, for an Order requiring the Canadian Pacific Railway Company to furnish siding service at Elcan, Alberta.

File No. 18838.1

TUESDAY, the 24th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, October 29 and 30, 1931, in the presence of counsel for the Rock Springs Coal and Brick Company, Limited, and the Rock Springs Mine, Limited, and the Canadian Pacific Railway Company, and what was alleged,—

The Board orders: That the Canadian Pacific Railway Company furnish siding service to the Rock Springs Coal and Brick Company, Limited, subject to and upon the following conditions, namely:—

1. That the mining company, within two months from the date of this order, pay the Canadian Pacific Railway Company \$3,143.82, made up as follows:—

Balance of account due railway company.....	\$ 766 93
Amount thrown away on 1928 repair of ballast spur.....	1,676 89
Amount required to repair mining spur.....	700 00
	<hr/>
	\$3,143 82

2. That the mining company, within two months from the date of this order, pay into some chartered bank to the credit of the Board the sum of \$1,500, being the amount required to repair the ballast spur; such sum to be held by

the Board until such time as it is satisfied that the application of the mining company is bona fide and justified by the business. In the event of failure of the mining company to so satisfy the Board, this amount, or so much as may have been expended by the railway company in the repair of the ballast spur, is to be paid to the railway company.

C. P. FULLERTON,
Chief Commissioner.

Application of the "Calgary Herald" and the City of Calgary re construction of siding extension to the "Calgary Herald" of the existing spur serving the Massey-Harris Co., Ltd., in Block 72, Calgary, Canadian Pacific Railway. Consideration of the question of the apportionment of cost reserved by Order 45806, dated November 20, 1930.

File No. 22398

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

By an order of this Board dated November 20, 1930, made on consent of all parties, the Canadian Pacific Railway Company was authorized and directed to construct an extension of the existing spur serving the Massey-Harris Company, Limited, to the property of the *Calgary Herald* in lots 33 and 34, block 72, plan A, in the city of Calgary. The order contained the following provision:—

"That the question of the apportionment of the cost be reserved, to be dealt with by the Board after a further hearing of the interested parties at the next sittings of the Board in the city of Calgary."

It will be observed that the order refers only to the extension of the existing spur. At the hearing, however, it developed that the real point in issue was the question of the cost of the use of the Massey-Harris spur by the *Calgary Herald*, and counsel for the respective parties agreed that this was the issue to be determined.

The *Calgary Herald* contended that it should only pay the Massey-Harris one-half the cost of the maintenance and rental of the spur. The Massey-Harris, on the other hand, claimed that in addition to one-half the cost of maintenance and rental, the *Calgary Herald* should pay interest on one-half the cost of the land occupied by the spur and cost of constructing the spur, amounting in all to about \$95 per year.

The properties of both companies are situated on the south side of a lane between 10th and 11th avenues. Prior to 1913, the Canadian Pacific Railway Company had a track extending along this lane, and the Massey-Harris Company in that year applied for a spur leading from this track into their property. In order to obtain this, it was necessary to secure the consent of the city of Calgary as 64 feet of the spur from the main lead to the Massey-Harris Company's property would be on the lane. This consent was given in the form of a by-law which contained a provision that the Massey-Harris Company "will allow an extension of the said spur at the discretion of the Board of Railway Commissioners for Canada and will waive any objections to the jurisdiction of the said Board to other owners." The last part of this clause is not very happily phrased and it is not at all clear what it means.

The spur was built by the Canadian Pacific Railway Company and paid for by the Massey-Harris Company. The siding agreement between the Canadian Pacific Railway Company and the Massey-Harris Company provided for the payment of only one dollar a year rental.

The contract between the city and the Massey-Harris Company evidenced by the by-law and the construction of the spur under its authority, contains no specific provision as to the payment of compensation in the event of the siding being extended to serve other industries. It is apparent that as a condition of permitting the Massey-Harris Company to use the public lane, the city stipulated that they must permit at any time in the future, if required, an extension of the spur to serve other industries. If the granting of such extension was intended to be conditional upon payment, one would have expected to find a provision to that effect in the contract. In the absence of such a provision I can only conclude that the use of the spur was to be given without compensation. The *Calgary Herald* offered to bear half of the cost of maintenance and rental of the spur, and an order will go accordingly.

November 21, 1931.

Commissioner Stoneman concurred.

ORDER No. 47741

In the matter of the Order of the Board No. 45806, dated November 20, 1930, authorizing and directing the Canadian Pacific Railway Company to construct an extension of the existing spur serving the Massey-Harris Company, Limited, to the property of the "Calgary Herald," in Lots 33 and 34, and through the property of Joseph Fleet Vincent in Lots 35 and 36, in Block 72, Plan "A," in the City of Calgary, Province of Alberta; and reserving the question of the apportionment of the cost.

File No. 22398

WEDNESDAY, the 25th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter of the question of the apportionment of cost at the sittings of the Board held in Calgary, October 29, 1931, in the presence of **counsel for and** representatives of the *Calgary Herald*, the City of Calgary, Massey-Harris Company, Limited, and the Canadian Pacific Railway Company, when it was developed that the real point in issue was the question of the cost of the use of the Massey-Harris spur by the *Calgary Herald*, not the cost of extending the existing spur as provided by the order, the submissions and arguments of counsel, and what was alleged, the *Calgary Herald* undertaking to bear half the cost,—

It is ordered: That the cost of maintenance and rental of the said spur be divided equally between the Massey-Harris Company, Limited, and the *Calgary Herald*.

C. P. FULLERTON,
Chief Commissioner.

Application of Geo. E. Bryant, Toronto, for an Order directing the City of Toronto, the Municipality of the Township of East York and the Municipality of the County of York to provide and construct a bridge on Moore avenue over the Belt Line Railway (C.N.R.), east of Welland avenue, Toronto.

File No. 23190

ORAL JUDGMENT

DELIVERED BY ASSISTANT CHIEF COMMISSIONER McLEAN AT THE CLOSE OF THE HEARING AT TORONTO, NOVEMBER 24, 1931

As to highways being carried across railway tracks, the Board has in many cases made it clear that in applications to open streets across railways an individual had no status to make the application, it must be made by a municipality. We have had many applications by individuals asking for public highways to be opened across tracks of railways, there may be exceptions, but I think the general practice has been that they have been directed to have recourse to a municipality to make the application. That is, an individual has no status to make application to open a highway across railway tracks.

If that applies to an application to open a highway, it seems to me it has a certain pertinency by analogy in such a case as this where the application is to have certain repair work done, so that the highway will be available.

But there is something more fundamental. In giving powers under the Railway Act to deal with highways, Parliament had in mind the scope of its powers and of the intention in connection with the granting of powers. Where questions of public safety and protection in connection with the operation of railways are involved, the Board has powers in connection with highways, in the way of improvements taking out cuts, grade separation, and so on. But it is not established that what is involved here falls within the powers so defined.

I therefore dismiss the application.

ORDER No. 47785

In the matter of the application of Geo. E. Bryant, of Toronto, hereinafter called the "Applicant," for an Order directing the City of Toronto, the Municipality of the Township of East York, and the Municipality of the County of York to provide and construct a bridge on Moore avenue over the Belt Line Railway (Canadian National Railways), east of Welland avenue, in the City of Toronto.

File No. 23190

TUESDAY, the 1st day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, November 24, 1931, in the presence of counsel for and representatives of the applicant, the city of Toronto, the county of York, and the Canadian National Railways, and what was alleged,—

The Board orders: That the application be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, et al, on behalf of the Railway Employees for Compensation in connection with the abandonment of the Canadian National Railways at Big Valley, Alberta, as a terminal.

(File No. 28025.9)

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

This is an application by employees of the Canadian National Railways for relief under section 179 of the Railway Act. Section 179 reads as follows:—

“The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, or remove, close, or abandon any station, or divisional point or create a new divisional point which would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby”.

The applicants allege that the Canadian National Railways have abandoned Big Valley, as a divisional point, and that by reason thereof financial loss has been caused to them by change of residence necessitated thereby.

Before the amalgamation of the Canadian Northern and Grand Trunk Pacific Railways, Big Valley was a terminal point on the Canadian Northern Railway, 133 miles from Calgary and 143 miles from Edmonton, on the Edmonton-Camrose-Stettler-Calgary Branch.

At one time there were employed at Big Valley twenty-five train crews of three men each, and twenty-five engine crews of two men each. What happened after the amalgamation can best be stated in the words of the applicants themselves. They say:—

“With the co-ordination and later the amalgamation of the Canadian Northern Railway with the Grand Trunk Pacific Railway, into the Canadian National Railways, traffic which was formerly handled by the Big Valley men was, for reasons of economy rerouted and diverted, principally to the former Grand Trunk Pacific lines and later a branch line was built from Hanna, Alta., to Warden, Alta., which further assisted in depriving these men of the work which they formerly enjoyed, and resulted in further economies for the railways. In addition, thereto, Mirror, Alta., was designated by the railways as the headquarters station for crews operating the Brazeau Branch west from Alix, Alta., and a portion of the work east from Alix, to Warden, coupled with work on the Endiang Branch (new Branch Hanna to Warden, above referred to), was assigned to crews working out of Hanna. The latter caused a direct loss to the Big Valley men, and, with respect to the work on the Brazeau Branch (Mirror to Brazeau via Alix), it became necessary for the men concerned to locate at Mirror or suffer the penalty of never getting home or seeing their families without securing leave of absence and losing time.”

The evidence shows that at the present time the staff has been reduced to two train crews of three men each, two engine crews of two men each, two foremen, and three station men including the agent.

From the above it is clear that the Canadian National Railways have not “abandoned” Big Valley, in the literal sense of that word. The applicants, however, contend that the retention of these men at Big Valley is mere camouflage and intended solely to escape the effect of section 179.

The real point then to be determined in the case is, whether or not the applicants have established their contention in this respect, for I am satisfied that, if such were the case, we would be entitled to hold that within the meaning of the section the terminal had been abandoned.

A number of illustrations were given by the applicants of operations on other sections of the railway alleged to be similar to those through Big Valley, from which they argue that the operating conditions at Big Valley can properly be taken care of without maintaining Big Valley as a terminal and that, consequently, the retention of men at Big Valley is merely a pretense.

After carefully considering the evidence and consulting with the Board's operating experts, I have arrived at the conclusion that the contention of the applicants has not been made out. The applicants having failed to bring themselves within section 179 of the Railway Act, the Board has no jurisdiction to deal with the matter.

C. P. FULLERTON.

November 27, 1931.

Commissioner Stoneman concurred.

ORDER No. 47760

In the matter of the application of the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, et al, on behalf of the railway employees for compensation in connection with the abandonment of the Canadian National Railways at Big Valley, Alta., as a terminal.

File No. 28025.9

SATURDAY, the 28th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, October 10, 1931, in the presence of counsel for and representatives of the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Canadian National Railways, the evidence submitted, and what was alleged; and reading the later submissions filed on behalf of the Brotherhood of Railroad Trainmen in support thereof; and upon the report of its Chief Operating Officer,—

The Board orders: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

Application of the Kingsley Navigation Company for an exception to the Board's General Order No. 326, of January 14, 1921, in favour of those carriers operating from points of origin in the United States who accept payment of freight charges in Canadian funds.

File No. 29674.54

JUDGMENT

BY THE BOARD:

This matter was spoken to at Vancouver on October 23 and the Pacific Steamship Company made a similar application, which was presented by Mr. George H. Smith at Regina, on November 2.

The steamship company stated that, on traffic between Vancouver and California points, they were accepting payment of freight charges in Canadian funds, and, that on joint traffic to interior points, the railways were demanding surcharge on the through charges, no part of such surcharge being paid to the steamship companies, and that the terms of General Order No. 326 should not, therefore, apply to these companies.

The Board's General Order No. 326 is not effective against the Kingsley Navigation Company, the Pacific Steamship Company, or any British Columbia coast steamship company, therefore the Board has no concern with the kind of funds accepted by such companies in payment of freight charges between Vancouver and United States ports.

The order applies to Canadian railways only, and states that a surcharge may be added by such railways to the total through charges, including advance charges payable to United States carriers, on *all* shipments (except coal and coke) between Canada and the United States, in both directions, when such charges are payable and collected in Canada. No exception is made of any route, therefore all international business, except coal and coke, originating or terminating on a Canadian railway, is subject to the surcharge, under the terms of the order.

When the matter of surcharge was dealt with in 1921, after careful consideration of all angles of the situation, the Board, as well as the other interested parties, both shippers and railway companies, recognized that the question of surcharge would require to be dealt with on the broad principle of averages, i.e., the amount or rate of surcharge would have to apply uniformly to all shipments, notwithstanding that, with respect to individual shipments or certain classes of traffic, there would be apparent anomalies.

One of the paramount considerations in this connection was the fact that, with respect to international rates, a certain rate might apply via several different boundary gateways or routes, some of which might involve a long haul in Canada and a short haul within the United States, and in other cases the situation would be reversed, and, unless the same rate of surcharge governed via all routes, it would result in a complete disruption of the whole international rate structure. In other words, in arriving at the arrangement covered by the Board's General Order No. 326, of January 14, 1921, the object was to avoid disturbing the equality of international rates via competing routes. It seems obvious that if the Board were to direct that its General Order No. 326 would not apply to the traffic described in this application, the result would be to create, with respect thereto, the very disruption in international rates which the Board endeavoured by said order to avoid.

There are three steamship companies operating between Vancouver and California points, viz.,

Canadian National Steamship Company,
Pacific Steamship Company,
Kingsley Navigation Company,

and, in addition, service is also given in connection with the Bay Cities Transportation Company, and joint rates are published by the Canadian Pacific and Canadian National Railways between points in Canada and points in California, in connection with these lines.

Rates are also published between the same points via all-rail routes, through New Westminster, Sumas and Kingsgate. In addition, through rates are published to Winnipeg via steamship lines to Seattle and Tacoma, Wash., thence Great Northern or Northern Pacific Railway.

Taking the rate on dried fruits, carloads, minimum 60,000 pounds, from San Francisco to Winnipeg:

The all-rail rate via a number of all-rail routes from San Francisco to Winnipeg is \$1.54 per 100 pounds. This same rate is published from San Francisco to Winnipeg via water to Seattle, thence Great Northern or Northern Pacific; also via water to Vancouver, thence Canadian National or Canadian Pacific Railway.

There is no question concerning the application of the surcharge tariff via the all-rail routes or the water-and-rail rates via Seattle. The United States carriers, subject to the jurisdiction of the Interstate Commerce Commission, are bound, under its decision, to require payment of their portion of the charges on international shipments in United States funds—see *Payment of Charges in United States currency*, 59 I.C.C., 263. Via all the competing routes above described there is an equality of rates.

The carload charge from San Francisco to Winnipeg, on 60,000 pounds of dried fruits, is \$924 plus the surcharge, which, based on an exchange rate of 10 per cent, would amount to \$55.44. If no surcharge were assessed on a shipment moving via Vancouver, such shipment would be delivered at Winnipeg for a total charge which would represent a reduction equal to slightly over 9 cents per 100 pounds below the total charge via the other competing routes; in other words, the carriers, parties to the rates via the all-rail routes or via water and Seattle, would require to make a reduction of 9 cents per 100 pounds, to place those routes on a rate parity with the rate through Vancouver, based on rate of exchange of 10 per cent.

However, a rate parity via the different competing routes could not be even thus accomplished, because the rate of surcharge varies and the rate via the competing routes could not be made to fluctuate contemporaneously with the fluctuation in the rate of exchange which, in turn, governs the rate of surcharge.

The tariff provides that, in arriving at the surcharge, the rate of exchange quoted for New York funds by the Bank of Montreal at noon, in Montreal, on the last day of each month will govern from the first to the fourteenth (inclusive) of the following month; similarly, such quotation at noon on the fourteenth will govern from the fifteenth to the last day (inclusive) of such month.

The requirements of the Interstate Commerce Commission necessitate thirty (30) days' notice of any change in rate, and further, after a rate has gone into effect it cannot be changed, withdrawn, or cancelled for at least thirty (30) days after it has become effective, except as otherwise specifically authorized by the Interstate Commerce Commission. Applicant apparently recognizes this situation, as, at the hearing in Vancouver, counsel for applicant stated:—

“But, although the Canadian railway is getting the benefit directly, indirectly it is the American railroad that is getting the benefit of offsetting the competition which we are able to put up by accepting payment in Canadian funds.”

From the foregoing it is evident that this application involves creating a reduction in the rate via the route through Vancouver.

As before stated, competing routes would be unable to meet these reduced rates, with a result that the balanced rate situation now in effect would be disrupted, and the general application of the surcharge order destroyed.

The only means the carriers via the other routes have of being protected with respect to the rate equality is by the application of the surcharge via all competing routes.

The competitive character of the rate to Winnipeg, to which reference has been made, also applies to points west thereof, as the Winnipeg rate is published thereto as maximum.

In view of what is herein stated, and the considerations which influenced the Board in arriving at the arrangement covered by General Order No. 326, as set out in its judgment dated January 13, 1921, the Board considers this application should be dismissed.

A. D. CARTWRIGHT,
Secretary, B.R.C.

OTTAWA, December 1, 1931.

ORDER No. 47769

In the matter of the application of the Kingsley Navigation Company for an exception to the General Order of the Board No. 326, dated January 14, 1921, in favour of those carriers operating from points of origin in the United States who accept payment of freight charges in Canadian funds.

File No. 29674.54

THURSDAY, the 3rd day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The matter having been spoken to at the sittings of the Board held in Vancouver, October 23, 1931, and in Regina, November 2, 1931, in the presence of counsel for and representatives of the Kingsley Navigation Company, the Canadian Pacific Railway Company, the Canadian National Railways, and the Traffic Department of the Government of Saskatchewan, and what was alleged; and upon reading the further submissions filed by the Canadian Pacific Railway Company and the Canadian National Railways—and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47714

In the matter of the application of the International Railway Company, hereinafter called the "Applicant Company," for approval of Supplement No. 2 to its Tariff C.R.C. No. 1, covering toll to be charged in respect of the Falls View Bridge and the Queenston-Lewiston Bridge, on file with the Board under file No. 36795.7.

WEDNESDAY, the 4th day of November, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's Supplement No. 2 to Tariff C.R.C. No. 1, covering toll to be charged in respect of the Falls View bridge and the Queenston-Lewiston bridge, on file with the Board under file No. 36795.7, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47709

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Rosetown Southeasterly Branch, mileage 0·00 to 17·60.

File No. 29384.28

SATURDAY, the 21st day of November A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Rosetown Southeasterly Branch from mileage 0·00 to 17·60.

C. P. FULLERTON,
Chief Commissioner

ORDER No. 47718

In the matter of the application of the Niagara Lower Arch Bridge Company, Limited, hereinafter called the "Applicant Company," for approval of Supplement No. 2 to Tariff C.R.C. No. 1, containing toll to be charged for the use of the Lower Arch Bridge at Niagara Falls, on file with the Board under file No. 36795.8.

MONDAY, the 23rd day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's Supplement No. 2 to Tariff C.R.C. No. 1, containing toll to be charged for the use of the Lower Arch bridge at Niagara Falls, on file with the Board under file No. 36795.8, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47754

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 27th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 197 of Supplement No. 21 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of

the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 197 of Supplement No. 21 to Tariff C.R.C. No. 856, approved herein, is 16½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47755

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 27th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 42 of Supplement No. 10 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 42 of Supplement No. 10 to Tariff C.R.C. No. 851, approved herein, is 16½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47756

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 27th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Truro, Nova Scotia, in item 8-C of Supplement No. 34 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 8-C of Supplement No. 34 to Tariff C.R.C. No. 783, approved herein, is 14½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47765

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic the portion of its railway between Park Street on the west and Victoria Avenue on the east, in the City of Hamilton, County of Wentworth, and Province of Ontario, constructed under Order No. 45813, dated November 14, 1930, as amended by Order No. 46930, dated June 26, 1931.

File No. 20161

WEDNESDAY, the 2nd day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the portion of its railway between Park street on the west and Victoria avenue on the east, in the city of Hamilton, county of Wentworth, and province of Ontario, the speed of trains not to exceed twenty miles an hour.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47772

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 3rd day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, as follows, namely:

Supplement 49 to Tariff C.R.C. No. E-1235,
 Supplement 53 to Tariff C.R.C. No. E-1237,
 Supplement 16 to Tariff C.R.C. No. E-1238,
 Supplement 37 to Tariff C.R.C. No. E-1240,
 Supplement 9 to Tariff C.R.C. No. E-1251,
 Supplement 24 to Tariff C.R.C. No. E-1259,
 Tariff C.R.C. No. E-1799,

subject to the provisions of subsection 2 of section 3 of the said Act.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47784

In the matter of the application of the Canadian National Railway Company under section 23 of the Revised Statutes of Canada (1927), Chapter 172, for an Order recommending to the Governor in Council the abandonment of the operation of the Alvinston Subdivision of its railway, and to dis-mantle this line.

File No. 22586.1

MONDAY, the 7th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the application and what is alleged in support thereof, the petitions, resolutions, and representations filed in objection thereto, the further written submissions by the railway company and parties in reply and answer; and upon the reports of its Chief Operating Officer and Assistant Chief Traffic Officer,—

The Board recommends for the approval of the Governor in Council that the Canadian National Railway Company be permitted to abandon the operation of the Alvinston Subdivision of its railway except that portion northwest of Glencoe to Gillis Siding, a distance of 4.22 miles.

2. That Order No. 47691, dated November 20, 1931, made herein, is rescinded.

C. P. FULLERTON,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF SEPTEMBER, 1931

Railway accidents 161, involving 12 persons killed and 156 injured
 Railway accidents at highway crossings..... 27, involving 13 persons killed and 51 injured

	Killed	Injured
Passengers..	—	21
Employees..	4	117
Others..	21	69
	<u>25</u>	<u>207</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NEW BRUNSWICK

1 Motor-bus—N.B. licence C-3417.

QUEBEC

- 7 Automobile—Auto driver failed to stop for crossing. Que. licences 33754, H-33260.
 80764, F-21700; Ont. U-474; Mass. 509626; N.Y. 4192.
 1 Automobile—Ran into side of train. Que. licence 25628.
 1 Automobile—Auto driver attempted to beat train. N.Y. licence 1-L-694.
 1 Motor-bus—Bus driver disregarded stop signals. Que. licence A-4.

ONTARIO

- 1 Automobile—Auto ran into side of train. Ontario licence CK-376.
 1 Automobile—Defective brakes on auto. Ontario licence HF-471.
 1 Automobile—Licence number not obtained.
 6 Automobile—Ontario licences 68676-C, FU-797, Z-5752, 5014-C, 20905-C, LW-676.
 1 Automobile—Auto stalled on crossing. Licence Calif. 4-S-22-32.
 1 Automobile—Auto skidded. Ontario licence RB-93.
 1 Pedestrian.

MANITOBA

- 1 Automobile—Auto ran into side of train. Man. licence 63-516.

ALBERTA

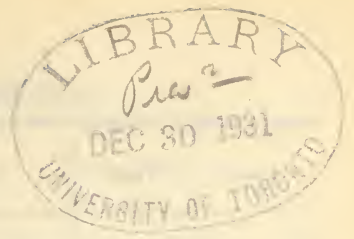
- 1 Auto truck—Truck ran into side of train. Alta. licence BT-2175.

BRITISH COLUMBIA

- 1 Auto truck—Truck ran into side of train. B.C. licence 82-881.
 1 Pedestrian.

Of the twenty-seven accidents at highway crossings, four occurred at protected crossings and twenty-three at unprotected crossings. Seventeen of the accidents occurred during the daylight hours and ten at night.

OTTAWA, November 27, 1931.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 21

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Dangerous Practices of Motorists, Drivers of other Vehicles, and Pedestrians at Protected Railway Crossings

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from August 1, 1931, to November 30, 1931, show fifty-four cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from July 1, 1931, to September 30, 1931, and (Eastern Lines) from August 1, 1931, to October 31, 1931, show a total of fifty-four cases.

The Toronto, Hamilton and Buffalo lines from August 1, 1931, to November 30, 1931, show one case.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Aug. 1...	16:02 K....	Blackwood, Victoria, B.C.	16163.....	Auto stalled on track. No. 392 stopped quickly, narrowly escaping accident.
" 3....	1.55 p.m....	First public crossing about 1 mile north of Inglewood.	H5547.....	Auto ran into caboose as train passing over crossing. Proper signals given.
" 11....	6.20 p.m....	Bridge St., Montreal, Que.	16916.....	Ignored flagman's signal and crossed track in front of moving engine.
" 11....	16 K.....	Private crossing at MP 14.4, Three Hills Subd.	74-801.....	Drove over track and was struck by speeder, resulting in injury to two railway employees; also two children. Auto and speeder both damaged.
" 12....	10.00 a.m....	Public Crossing at West Switch, Stony Plain, Alta.	102.....	Ignored signals and auto struck by engine. No one injured. Auto damaged.
" 21....	14.57.....	Public Crossing, Mlg. 27, Unity Subd., near Cavell, Sask.	.....	Road scraper stopped too close to track. Rear of machine struck by train No. 2.
" 31....	10.00 a.m....	First public crossing north of Angus Station, Angus, Ont.	AM 643.....	Drove on to crossing before it was cleared by cars; no personal injuries.
Sept. 3....	15.55.....	Colwood Hotel Crossing, Victoria, B.C.	10-159.....	Speeded over crossing in front of motor coach; nearly struck another auto on opposite side.
" 4....	21.00.....	96th Street, Edmonton, Alta.	59354.....	Auto failed to stop before proceeding over crossing; struck by yard engine.
" 4....	17.05 K....	Albert Street, Regina, Sask.	6-671.....	Applied brakes too quickly on approaching crossing; skidded into ditch; all prescribed signals given.
" 11....	.....	Chilliwack-Yale Road crossing, B.C.	2-677.....	Auto drove directly in front of train.
" 14....	11.50 a.m....	First crossing east of East Switch, Fort Langley.	67-420.....	Crossed track immediately in front of moving train.
" 22....	7.30 p.m....	Private crossing 200 ft. East of Donnacona Sta., Grand Mere Subd.	F-18834.....	Auto truck ran into side of train; auto damaged. No one injured.
" 23....	5.00 p.m....	Herriot St., Drummondville, Que.	82574.....	Driver claimed he could not stop before arriving to north gate of Herriot Street.
" 24....	17.12 K....	M.P., 40, Vegreville Subd., Ranfurly, Alta.	38-497.....	Auto racing train to crossing; could not round curve at crossing and rolled into ditch.
" 26....	1.40 a.m....	First Public crossing south of station, Emsdale, Ont.	JR-14.....	Auto crashed into side of train when standing on crossing; signals given driver.
Oct. 10....	7.20.....	MP 103.3, Cudworth Subd.	20404.....	Ran into side of extra south 2113.
" 11....	3.45 p.m....	Norfolk St., crossing, Simcoe, Ont.	U-2054.....	Ran past flagman's signal in front of approaching train.
" 14....	13.43.....	Private crossing just East of Kinsella Station, Viking Subd.	64717.....	Drove auto across tracks in front of approaching train. Auto struck killing both men.
" 14....	7.30 p.m....	Main St., Glencoe, Ont.	LK 774.....	Approaching crossing with rain on windshield.
" 16....	4.10 P.....	Albert St., Oshawa, Ont.	E.U. 49.....	Crossing tracks when train almost on crossing, despite efforts of watchman to stop him.
" 16....	2.30 p.m....	Huron St., Collingwood, Ont.	A.B. 69.....	Auto approaching crossing unable to stop and slid into train; no damages and no injuries.
" 17....	.....	Kingston Road, Cobourg, Ont.	E.P. 185.....	Did not have car under control when approaching crossing.
" 18....	1.20 a.m....	Highway No. 7, crossing mileage 18.35, Bala Subd., south of Richmond Hill.	C-1891.....	Auto ran into train; badly damaging auto and injuring four occupants—one seriously.
" 20....	5.29 p.m....	Norfolk St., Simcoe, Ont.	791.....	Crossing in front of No. 238 against stop signal.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Oct. 22....	12.15 K.....	West approach Sask., River Bridge.	5-560.....	Crossing in front of moving train. Stalled on track and struck by Ex. South 1297.
" 24....	5.29 p.m...	Norfolk St., Simcoe, Ont.	NH-791.....	Crossed tracks against stop signal.
" 26....	7.05 p.m...	Lindsay St., Drum- mondville, Que.	81176.....	Running through gates while same were being lowered.
" 26....	10.55.....	Highway No. 15, Touchwood Subd., M.P. 93-8.	.....	Drove team across track without looking to see if train approaching; resulting in Mrs. Bennett being fatally injured and Ina Bennett also injured.
" 26....	22.05 K.....	6th Ave. East, Prince Albert, Sask.	T 3-271.....	Crossing in front of moving cars struck by train.
" 27....	8.28 a.m...	Church St., Yarker, Ont.	DB-718.....	Did not stop when he heard train blow.
Nov. 2....	6 K.....	1st public crossing, West Drumheller Station.	41935.....	Jammed on brakes when he saw train approaching; ran into side of train. Two occupants in hospital. Car damaged.
" 4....	18 K.....	2nd Av West, Prince Albert, Sask.	3-276.....	Ran into side of train.
" 5....	.....	Kingston Road, Co- bourg, Ont.	57671.....	Did not have truck under control when approaching railway crossing.
" 6....	18.05 K.....	No. 12 Highway, Ros- thern, Sask.	D-185.....	Fast driving; ran into side of train.
" 6....	11.20 a.m...	Private crossing at Stony Plain, Alta.	CT 9-143.....	Truck proceeded without first obser- ving whether train approaching.
" 6....	8.00 a.m...	Public crossing 13 poles East of MP 48, Grand'Mere subd.	18786.....	Truck did not stop before going over crossing and was struck by motor work car.
" 8....	12.40 a.m...	East Main St., Wel- land, Ont.	F.R. 385.....	Driving full speed up to gate.
" 10....	9.50 K.....	Temporary crossing North End, Atha- basca, Alta.	T-18024.....	Drove onto track and was struck by engine. No injuries.
" 11....	.....	Zenon Park, Arbor- field, Sask.	6-755.....	Crossing track without caution, struck by train.
" 12....	18.35 K.....	First public crossing West of Tofield sta- tion, Alta.	43-943.....	Ignored signal; drove onto track and struck by train. No injuries.
" 13....	10.30 K.....	Main St. crossing, Ve- greville, Alta.	D-784.....	Truck tried to cross tracks in front of engine. No injuries.
" 18....	18.30 K.....	Provincial Highway No. 14 near Clavet, Sask.	24-296.....	Apparently did not take proper care to see if train on crossing and ran into side of train.
" 20....	12.20 p.m...	Charlotte St., Peter- boro, Ont.	E.E. 126.....	Carelessness in approaching crossing.
" 22....	17.15 K.....	95th St. crossing, Ed- monton, Alta.	.....	Ran into crossing gate, breaking same.
" 23....	11.10 K.....	First crossing east of Irrigation Bridge, Calgary Yard.	T-13272.....	Attempted to cross track without ascer- taining if same was clear; struck by train; no one injured. Driver claims did not hear crossing bell or engine whistle.
" 23....	10.10 p.m...	Montreal Road, M.P. 84/85 L'Original subd., 2 miles west of Rockland, Ont.	BE-504.....	Did not have auto under control ap- proaching crossing; ran into side of Diesel Car; Diesel and auto both damaged; no one injured.
" 24....	.....	95th St. crossing, Ed- monton, Alta.	62-325.....	Ran into crossing gate breaking same.
" 25....	23.42 K.....	124th St. crossing, Ed- monton, Alta.	58-615.....	Drove up onto crossing and collided with buffer beam of engine.
" 25....	15.33 K.....	95th St. crossing, Ed- monton, Alta.	.....	Ran into crossing breaking same.
" 25....	14-K.....	Yale Road, Chilli- wack, B.C.	72,300.....	Attempted to cross track in front of moving train.
" 27....	.....	Private crossing at Stony Plain, Alta.	63152.....	Did not see approaching train. Auto struck by train; occupants seriously injured.
" 27....	6.25 p.m...	Third public crossing north of Graven- hurst, Ont.	JT 487.....	Auto ran into train and was dragged about 100 yards, injuring the three occupants.
" 28....	4.20 p.m...	Church St., Yarker, Ont.	C.N. 810.....	Brakes out of order

CANADIAN PACIFIC RAILWAY—WESTERN LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices.
MANITOBA DISTRICT—Nil				
SASKATCHEWAN DISTRICT				
July 14....	16.48 K....	Broadway-Yorkton...	24262.....	Crossed over track against stop signal, Engine 873.
" 22....	10.35 K....	" "	T-1-422.....	Crossed over track against stop signal, just ahead of Engine 761 W.
Aug. 27....	16.40 K....	" "	14-603.....	Ran right up to stop signal when train was backing over crossing, engine 2068.
Sept. 25....	9.20 K....	" "	42-229.....	Crossed over track against stop signal while engine 2078 was backing up.
" 26....	17.15 K....	" "	77-062.....	Crossed over track against stop signal, engine 2078. Had to slow up train.
ALBERTA DISTRICT				
Sept. 3....	11.25 K....	4th St. West, Calgary.	14-117.....	Ran into southeast gate, breaking same.
BRITISH COLUMBIA DISTRICT				
July 21....	14.35 K....	North Vancouver Ferry.	.....	Man ran under crossing gate as it was getting near to ground.
Aug. 8....	18.30 K....	" "	.....	Two passenger autos passed under crossing south side when gates on north side were already down.
Sept. 6....	10.05 K....	Powell St. Vancouver.	B.C. 79-087....	Ignored stop signal. Yard engine had to stop to avoid mishap.
ESQUIMALT AND NANAIMO RAILWAY Nil.				
NEW BRUNSWICK DISTRICT				
Aug. 5....	.....	Douglas Ave., St. John	.....	Dr. London, 261 Chesley St. drove automobile through crossing breaking board on west end gate as gates being lowered for engine of No. 15.
" 15....	.....	" "	J1800.....	Auto truck dashed under gates while same were being lowered for train.
Sept. 9....	7.55 p.m...	" "	NB-6272.....	Auto raced another car over crossing at a high rate of speed.
" 19....	.....	" "	.....	Automobile turned on crossing.
" 25....	2.40 p.m...	" "	C-2131.....	Auto drove under gates while same were being lowered for engine.
" 26....	2.20 p.m...	Fairville, St. John	T-7966.....	Auto drove under east gate as same was being lowered after west gates were down.
" 28....	.....	" "	T-6263.....	Auto drove under west gate as it was being lowered, bell was ringing.
" 28....	.....	Douglas Avenue	.....	Auto drove through crossing while gates were being lowered for train No. 103.
Oct. 6....	.....	" "	.....	Auto turned on crossing.
" 10....	.....	" "	.....	Truck turned on crossing.
" 14....	.....	" "	T-1072.....	Auto truck dashed through crossing at a high rate of speed.
" 15....	3.50 p.m...	" "	.....	Truck drove under gates while same were being lowered for engine.

CANADIAN PACIFIC RAILWAY—EASTERN LINES

QUEBEC DISTRICT

Date	Time	Crossing	Auto No.	Dangerous Practice
Aug. 10....		Crown St., Quebec....	Que. 10829....	Gates had been lowered for train when auto going south to north struck and broke southeast gate. Car backed up in time to clear train.
" 14....		St. Valier St., Quebec.	" F-268....	Truck passed underneath northwest gate which was being lowered, catching barrier arm with cab of truck and on attempting to back up broke same.
" 23....		Bridge St., Quebec....	" 12161....	Gates had been lowered for train when auto approaching from south side at good speed struck northwest gate and damaged windshield of auto. No damage to gates.
Sept. 14....		Bridge St., Quebec....	Que. 13120....	Gates on North side had been lowered and gateman was in act of lowering south side ones when auto approached at a moderate speed and passed under gates being lowered. Car ran over crossing striking and broke northeast gate.
" 25....		Crown St., Quebec....	Vehicle.....	Gates were in upright position when vehicle approached crossing from the north and passed too close to base of northwest gate, resulting in top of wagon catching and breaking same.
" 25....		St. Valier St., Quebec.	Que. H-27706..	Gates had been lowered down for C.N.R. train 33 when auto, coming towards the City, struck and broke gate No. 4 on northeast side. Two autos already were stopped and it was necessary for driver to cross over to wrong side of street to go over crossing.
Oct. 1....		Crown St., Quebec....	" T-1529....	North side gates had been lowered when an auto coming from the direction of the City went over crossing and struck and broke northeast gate, coming to a stop about 150 feet beyond crossing.
" 8....		St. Valier St., Quebec.	" H-1395...	Gates were being lowered when an auto coming towards the city went over crossing and broke end of southeast gate.
" 30....		Dorchester St., Quebec.	" F-446....	Gates were fully raised when truck, meeting another car on the crossing, passed too close to base of south side gate, resulting in gate being struck and gate arm slightly damaged.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Concluded*

ONTARIO DISTRICT

Date	Time	Crossing	Auto. No.	Dangerous Practice
Aug. 4....	2.25 p.m....	Adelaide St., London.	" W-2473...	Auto passed watchman's stop sign and crossed tracks in front of approaching yard engine.
" 5....	12.40 a.m....	Talbot St., St. Thomas.	" U-8953...	Auto turned out to pass a truck and ran into side of freight train, pulling over crossing.
" 6....	8.14 p.m....	Scugog St., Cobourg..	Ont. EZ-168...	As train approached crossing gateman was lowering crossing gates when automobile, southbound, ran into north gate barrier, breaking same.
" 9....	.....	Raglan St., Renfrew, Ont.	Ont. CX-538...	Car owned and driven by J. Laundo of Renfrew ran under gates. Gates were being lowered and driver stopped auto and backed up, backing into same, breaking piece off gate.
" 12....	3.37 p.m....	Adelaide St., London.	" KW-763..	Auto passed watchman's stop sign and crossed tracks while yard engine switching over crossing.
" 14....	9.35 a.m....	Eramosa Rd., Guelph.	" FB-532...	Auto ran into north gate arm, breaking it off. Warning bell also ringing.
" 23....	5.45 p.m....	Waterloo St., London.	" C-145-95..	Notwithstanding gates down and bell ringing, auto ran into gate arm, breaking it.
" 28....	6.35 p.m....	Pall Mall St., London.	" V-7184....	Although bell ringing and gates being lowered, auto would not stop and crossed over tracks while gateman forced to hold gates up for him.
" 29....	7.55 a.m....	Waterloo St., London.	.....	Bicyclist failed to hear bell ringing or notice gates being lowered and rode into gate arm, resulting in injury to himself.
" 28....	12.50 p.m....	Queen St., Chatham..	" 56-346-C..	Auto ran into gate damaging it, while same down.
Sept. 1....	3.37 p.m....	Waterloo St., London.	" V-8096....	Auto would not stop, although gates being lowered and warning bell ringing.
" 4....	4.34 p.m....	" "	" V-7317....	Auto rushed over crossing as bell was ringing and gates being lowered.
" 6....	4.15 p.m....	" "	" W-1035...	Auto rushed over crossing as bell was ringing and gates being lowered.
" 7....	1.35 p.m....	Quebec St., London..	" V-5689....	As yard engine was shoving cars over crossing, auto drove around end of leading car and nearly knocked crossing watchman down.
" 8....	4.39 p.m....	Waterloo St., London.	" V-907....	Auto rushed over crossing as bell ringing and gates being lowered.
" 8....	9.17 p.m....	Richmond St., London	" 648.....	Motor cycle crashed through south gate arm, breaking it off and crossed tracks ahead of fast freight train.
" 9....	7.30 p.m....	" "	" OB-123...	Notwithstanding gates were lowered, warning bell ringing for passenger train westbound, auto pulled out around other standing autos and drove through centre of gate arms and stood on eastbound crossing while train passed over crossing.
" 10....	4.10 p.m....	Waterloo St., London.	" V-9288....	Auto dashed over crossing as bell was ringing and gates coming down.
" 17....	.....	Dufferin St., Toronto.	" F-9265....	Automobile ran into and damaged gates after they had been lowered.
" 30....	2.45 a.m....	Burketon, 1st Xing west of station (public Xing).	" ER-638...	While train was standing at station with rear end over public crossing, automobile swerved and ran into ditch on west side of road to avoid striking train.
Oct. 8....	4.10 p.m....	Adelaide St., London.	" FE-528...	Auto disregarded watchman's stop sign and crossed tracks in front of approaching train.
" 10....	4.40 p.m....	Duke St., Guelph....	" L-631....	Auto driver failed to hear engine whistle signals nor crossing bell ringing, nor notice illuminated danger sign lit, and was struck by freight car being shoved over crossing.
" 17....	12.26 p.m....	Winstanley St. W., Monkon.	" LD-541...	Auto ran into side of motor car No. 46 slightly injuring driver of auto.
" 22....	4.54 p.m....	Quebec St., London...	" V-5565	Auto crossed tracks disregarding watchman's stop sign.

TORONTO—HAMILTON AND BUFFALO RAILWAY COMPANY

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Nov. 25....	8.10 a.m....	Cochrane Road, east of Bartonville, Ont.	P-8047.....	Auto drove over crossing immediately in front of train. Engineer reports that they came very near striking auto.

Original Article	Original Article	Original Article	Original Article	Original Article
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
26	27	28	29	30
31	32	33	34	35
36	37	38	39	40
41	42	43	44	45
46	47	48	49	50
51	52	53	54	55
56	57	58	59	60
61	62	63	64	65
66	67	68	69	70
71	72	73	74	75
76	77	78	79	80
81	82	83	84	85
86	87	88	89	90
91	92	93	94	95
96	97	98	99	100

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Barrie's Limited, et al, Regina, for an Order directing the City of Regina to provide and construct a suitable foot passenger subway underneath the yards and tracks of the Canadian Pacific Railway Company, in Regina, the same to commence at or immediately adjacent to the intersection of Hamilton Street and South Railway Street, in said city, and to end at or near the intersection of said Hamilton Street and Dewdney Avenue, in said city.

File No. 999.1

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

By an order of the Board dated October 5, 1905, made upon the application of the city of Regina, leave was given to the city to open up and extend Hamilton street across the lands and tracks of the Canadian Pacific Railway Company.

On January 20, 1911, the Board made an order giving the city of Regina leave to construct a subway under the lands and tracks of the Canadian Pacific Railway at Broad street. The order was made upon the application of the city, and contained among other conditions the following:—

"4. This order is made upon condition that the city undertakes to pass, and does pass, the necessary by-law for the closing of Hamilton street, and closes up the said street, and undertakes to pay and does pay all abuttal damages consequent upon such closing."

The city proceeded with the construction of the subway and has completed the same, but has wholly failed to carry out any of the conditions above quoted.

Notwithstanding the failure of the city to fulfill these conditions, the Canadian Pacific Railway Company shortly after the making of the last-mentioned order closed the said crossing at Hamilton street to vehicular and pedestrian traffic.

On December 31, 1914, the city of Regina applied to the Board for, and obtained, Order No. 23082, authorizing it to construct an overhead bridge at or near Hamilton street. This bridge has never been constructed.

On January 9, 1920, the city of Regina applied for, and obtained, Order No. 29257, cancelling previous Order No. 23082 and authorizing it to construct

a foot passenger subway under the tracks of the Canadian Pacific Railway Company at Hamilton street. The order provided that the work was to be completed by the 1st of July, 1921. From time to time the city applied for and obtained orders extending the time for completion, but up to the present time the work has not been commenced.

The present application is made by the owners of lands abutting on said Hamilton street crossing, for an order under sections 255 to 267, inclusive, of the Railway Act, directing the Corporation of the City of Regina to provide and construct a suitable foot passenger subway underneath the yard and tracks of the Canadian Pacific Railway Company at Hamilton street. In this application they set out the following facts:—

1. That they are the owners of land abutting on said Hamilton street at or in the immediate vicinity of the proposed highway, and are rate-payers of the city of Regina.

2. That prior to the year 1905, a permissive level crossing used by vehicular and foot passengers was *de facto* established and used with the acquiescence and tacit consent of the Canadian Pacific Railway Company.

3. That in the year 1905, by an order of the Board of Railway Commissioners for Canada, dated October 5, 1905, the said permissive crossing was on the application of the Corporation of the City of Regina declared to be a public crossing, and provision was made for the safeguarding of vehicular and pedestrian traffic, partly at the expense of the railway company and partly at the expense of the said city.

4. That owing to the opening up and using of the said crossing, land abutting on those portions of Hamilton street immediately adjacent thereto, and other lands in the immediate vicinity thereof, became exceedingly valuable business properties and were purchased by business men on the strength of and expected continuance of the said crossing.

5. That by order made by the Board on the application of said city, dated January 20, 1911, provision was made for the construction of a vehicular and pedestrian subway under the lands and tracks of the railway company at Broad street, in the said city, by extending Broad street northerly.

6. That this order was made upon condition "that the city undertakes to pass, and does pass, the necessary by-law for the closing of Hamilton street, and closes up the said street and undertakes to pay and does pay all abuttal damages consequent upon such closing."

7. That the city has not passed the necessary by-law closing Hamilton street.

8. That the said city had not paid any damages consequent upon such closing.

9. That subsequent to the making of the said order of the Board dated January 20, 1911; the railway company *de facto* closed said crossing at Hamilton street to both vehicular and pedestrian traffic.

10. That subsequent to the *de facto* closing of the said crossing, the said lands adjacent thereto greatly depreciated in business value when compared with their pre-existing value, as compared with other similarly situated business properties, whereas had the said crossing remained open, the said lands would have become comparatively more and more valuable as time went on.

11. That from time to time the owners of property abutting on Hamilton street adjacent to the aforementioned crossing pressed upon the city their claims for damages and from time to time the then council for the city proposed various measures of relief for such owners, none of which have been adopted or put into effect.

12. That one of the said measures which applicants submit was proposed by said city in lieu of damages aforesaid was the construction of an overhead bridge crossing the tracks of the Canadian Pacific Railway at the same place where the said crossing had existed, and the said city obtained authority for the construction of this overhead bridge by an order of the Board dated December 31, 1914.

13. That the said city did not construct the said overhead bridge pursuant to the said order, but from time to time obtained orders extending the time for its construction, but finally the council decided that a subway would not be so much more expensive than an overhead bridge and would be more suitable for the traffic conditions which were then obtaining.

14. That accordingly, on the application of the said city, the Board by order dated January 9, 1920, authorized the city to construct a foot passenger subway in lieu of the said overhead bridge, which said subway was, by the terms of the said order, directed to be completed by July 1, 1921.

15. That the said city has never completed the said subway although the applicants and other affected property owners and citizens have from time to time, by petition and otherwise, urged upon the council the necessity of so doing.

The applicants now ask for an order directing the Corporation of the City of Regina to provide and construct the subway authorized by order of this Board, dated January 9, 1920, above referred to.

In the answer of the city on file with the Board, practically all the above facts, with the exception of facts involving the admission of damages, were admitted.

I think the applicants have misconceived their remedy. This Board has no jurisdiction at the instance of property owners to make an order directing the city of Regina to construct the subway in question. The Board, however, has power to compel the city to carry out the conditions upon which the order of January 20, 1920 was made.

Section 588 of the present City Act, Revised Statutes of Saskatchewan (1930), Chapter 103, provides as follows:—

“(1) The city may pass by-laws for closing and selling or leasing any public highway the fee whereof is not vested in the Crown, or any public highway the fee whereof is vested in the Crown, provided that the consent of the Minister of Highways has been first obtained.

“(2) No such by-law shall be passed

“(a) unless at least two weeks' notice of the intention of the council to pass the same be given by registered letter to all persons who are either registered or assessed as owners of the lands abutting upon the portion so proposed to be closed and sold or leased, nor

“(b) unless such notice is advertised previous to the passing of the by-law in some newspaper in the city at least once each week for two successive weeks, nor

“(c) until any person who claims that his land will be injuriously affected thereby, and petitions to be heard, has been afforded an opportunity to be heard by himself or his agent in relation to the proposed by-law.

“(3) Any such person so claiming, petitioning and appearing shall be entitled to be compensated for all damage caused to his land by reason of anything done under the by-law; such compensation to be determined in the same manner and subject to the same conditions as in the cases provided for by sections 415 to 443.”

Until the city passes a by-law, the applicants have no status to have damages assessed under the above-quoted section. They are, therefore, in this position, they have been deprived of their crossing by the action of the Canadian Pacific Railway Company in closing it, and they are not in position to recover damages.

Section 33 of the Railway Act provides that—

“The Board shall have full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested,

“(a) Complaining that any company, or person, has failed to do any act, matter or thing required to be done by any order . . . made thereunder by . . . the Board.

“(2) The Board may order and require any company or person to do forthwith, or within or at any specified time, and in any manner prescribed by the Board, so far as is not inconsistent with this Act, any act, matter or thing which such company or person is or may be required to do under this Act . . . ; and shall for the purposes of this Act have full jurisdiction to hear and determine all matters whether of law or of fact.”

It is quite clear in my mind that the moment the city of Regina took the benefit of the order giving it leave to build a subway at Broad street, by constructing the said subway, it became liable to fulfill the conditions upon which the said order was granted. The conditions then became “an act required to be done by an order of the Board” within the meaning of section 33 (a).

I think the reasoning of Viscount Finlay in delivering judgment of the Privy Council in the *Toronto Railway Company v. Corporation of the City of Toronto*, 1920 Appeal Cases, 426, at p. 436, bears out this position.

An order will go requiring the city of Regina within two months from the fifteenth day of December, 1931, to pass the necessary by-law for the closing of Hamilton street as required by paragraph 4 of the order of this Board dated January 20, 1911. In the event of the by-law not having been passed within the specified time, the city of Regina shall be liable to a penalty of one hundred dollars per day for every day it remains in default.

November 25, 1931.

Commissioner Stoneman concurred.

ORDER No. 47799

In the matter of the application of Barrie's Limited; Henry Black; Monarch Lumber Company, Limited; G. R. Perry; Rex Theatre; B. F. Ackerman & Company, Limited; and F. Nash, all of the City of Regina, Saskatchewan, under Sections 255 to 267 inclusive of the Railway Act, for an Order directing the Corporation of the City of Regina to provide and construct a suitable foot passenger subway underneath the yards and tracks of the Canadian Pacific Railway Company's railway in the City of Regina, the same to commence at or immediately adjacent to the intersection of Hamilton Street and South Railway Street and to end at or near the intersection of the said Hamilton Street and Dewdney Avenue, in the said city.

File No. 999.1

FRIDAY, the 27th day of November, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the application and what is alleged in support thereof, the reply of the city of Regina, the answer of the applicants to said reply, and what has been filed on behalf of the Canadian Pacific Railway Company; and upon

hearing the matter at the sittings of the Board held in Regina, November 2, 1931, in the presence of counsel for the applicants, other property owners affected, the City of Regina, and the Canadian Pacific Railway Company, the evidence offered and the arguments of counsel; and upon it appearing that this Board, on the 20th day of January, 1911, made an order giving the city of Regina leave to construct a subway under the lands and tracks of the Canadian Pacific Railway Company at Broad street, in the city of Regina, upon the condition that the city undertook to pass, and did pass, the necessary by-law for the closing of Hamilton street, and closed up the said street, and undertook to pay and did pay all abuttal damages consequent upon such closing; and upon it further appearing that the said city of Regina has under the authority of the said order constructed the said subway, but has wholly failed either to pass the necessary by-law for the closing of Hamilton street, or to close said street, or to pay all or any abuttal damages consequent upon such closing,—

The Board orders as follows:

1. That the Corporation of the City of Regina be, and it is hereby, required, within two months from the 15th day of December, 1931, to pass the necessary by-law for the closing of Hamilton street, in the city of Regina, as required by paragraph 4 of the said order of the Board dated January 20, 1931.

2 In the event of the by-law not having been passed within the time herein limited, the Corporation of the City of Regina shall be liable to a penalty of one hundred dollars (\$100) a day for every day it fails or neglects to comply with the requirements of this order.

C. P. FULLERTON,
Chief Commissioner.

Application of the Canadian National Railway Company, for permission to join its Lulu Island Branch with the Vancouver and Lulu Island Railway in D.L. 164, Gp. 1, N.W.D., in the Municipality of Burnaby, B.C.; and at Tucks;

and

Application of the North Fraser Harbour Commissioners, the Corporation of the City of Vancouver, the Corporation of the Township of Richmond, the Corporation of the District of Burnaby, the Board of Trade of the Municipality of Richmond, the Associated Boards of Trade of the Fraser Valley, the Transportation Bureau of the Vancouver Board of Trade, the South Burnaby Board of Trade, the Eburne Saw Mills, Ltd., the Burke Lumber Co., Ltd., the Dominion Mills, Limited, the British Columbia Concrete Company, Limited, the British Columbia Red Cedar Shingle Company, Limited, and the Marpole Grain Company, Limited, for an order that the lines and tracks of the Canadian National Railways and the Vancouver & Lulu Island Railway shall be connected as requested in the two applications of the Canadian National Railways, dated September 15, 1930, so as to permit of the safe passage and convenient transfer of engines, cars and trains from the tracks of the one railway to the other, and that such connection shall be maintained and used.

(File No. 37381.3)

(File No. 37381.4)

Heard at Vancouver, B.C., October 21 and 22, 1931.

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

This is in form an application of the Canadian National Railways for permission to join their Lulu Island Branch with the Vancouver and Lulu Island Railway at Tucks and at Sussex avenue. What is really being asked for is, in my view, leave to construct interchanges at these points.

The application is supported by numerous Boards of Trade and other public bodies, as well as by a number of shippers located on the Vancouver and Lulu Island Railway.

The Vancouver and Lulu Island Railway Company was incorporated by an Act of the Province of British Columbia, 54 Victoria, C. 60. In 1901 it was built from Vancouver to Steveston on the south side of Lulu island, crossing the north arm of the Fraser river at Eburne, now Marpole.

By chapter 86 of the Dominion Statutes for the year 1901, it was declared a work for the general advantage of Canada with power to lease to the Canadian Pacific Railway Company.

A Lease was made on August 31, 1901, for nine hundred and ninety-nine years. The Canadian Pacific Railway Company owns all the capital stock.

On July 9, 1904, and April 19, 1905, agreements were made between the Canadian Pacific Railway Company, the Vancouver and Lulu Island Railway Company and the British Columbia Electric Railway Company, which were confirmed by chapter 66 of the Dominion Statutes 1907, in which the British Columbia Electric undertook to electrify, and did electrify, the railway from Vancouver to Steveston.

The agreement of 1905 provides that if the Vancouver and Lulu Island Railway Company should build a branch from Marpole to New Westminster along the north side of the North arm of the Fraser river, the British Columbia Electric would electrically equip it.

In 1908, the Vancouver and Lulu Island Railway Company built this branch, which was electrically equipped by the British Columbia Electric.

On April 26, 1909, a new agreement was entered into abrogating the two last mentioned agreements, and leasing the Vancouver and Lulu Island Railway to the British Columbia Electric for twenty-one years. Since the expiry of that lease in 1930, the British Columbia Electric has been operating the freight service on the road for the Canadian Pacific Railway Company on a percentage basis, the passenger service being conducted by the British Columbia Electric for itself.

When the Vancouver and Lulu Island Railway line was first built, there was little business there, but many industries have since been established on the north bank of the North arm of the Fraser river which have been served, and are being served, by the Vancouver and Lulu Island Railway.

In 1930 the Canadian National Railways began the construction of a line of railway extending from New Westminster in a westerly direction along the north side of the North arm of the Fraser river about three miles, crossing the river at that point and extending west along the south side of the North arm of the Fraser river on Lulu Island to a point called Tucks about six miles, with a branch line from a point near where the main line approaches the crossing of the river in a northwesterly direction to a point near Sussex avenue about 1.9 miles.

This railway and branch are now completed and the Canadian National Railways ask for connections with the Vancouver and Lulu Island Railway at Tucks and at Sussex avenue.

The first point to determine is a question of law. Two applications were filed by the Canadian National Railways, one reading,—

“for permission to joint its Lulu Island Branch with the Vancouver and Lulu Island Railway in D.L. 164, Gp. 1, N.W.D., in the Municipality of Burnaby, Province of British Columbia, as shown on plan dated Winnipeg, May 7, 1930”;

the other,—

“for permission to join its Lulu Island Branch with the Vancouver and Lulu Island Railway in Sketch 7375F and Sketch 3767, part of Fr. Sec. 22, Block 5N, R. 6, W.C.M., at Tucks, in the Municipality of Richmond, as shown on plan dated Winnipeg, June 24, 1930.”

Mr. Fraser on behalf of the Canadian National Railways strenuously urged that his applications were under section 252 of the Railway Act for leave to “join” the tracks of the Vancouver and Lulu Island Railway, and that he was not applying for interchanges under section 253. At p. 3531 of the evidence Vol. 590, the following appears:—

“The CHIEF COMMISSIONER: Then you agree we must go into the whole question as an ordinary interchange, and consider whether it is in the interest of the public that this interchange should be put in?”

“Mr. FRASER: No sir, I do not. I will tell you why I am coming to you. I come to you under section 252 because I require your leave, because you are the body to say how the connection shall be made, what the safety and convenience of the public require, under 252. I am not under 253 now.

“The CHIEF COMMISSIONER: That is not your application as I read it. Your application is simply for permission from us to make this connection.

“Mr. FRASER: That is not my whole application.

“The CHIEF COMMISSIONER: Then we have gone into a lot of material that has absolutely no bearing on the case. Your position is that you are entitled to join at these places, and all you want is to have your plans approved?

“Mr. FRASER: That is my position.

“The CHIEF COMMISSIONER: I do not understand the application that way at all. I think I am getting your position. Your position is that as far as you are concerned we have no discretion as to whether this connection shall be made or not, the Statute authorizes that, and all we have to do is simply approve of the plans and see that the connection is a proper connection.

“Mr. FRASER: Yes, that is my position, and has always been my position.”

Section 252 reads in part as follows:—

“(1) The railway lines or tracks of any railway company shall not cross or join or be crossed or joined by or with any railway lines or tracks other than those of such company, whether otherwise within the legislative authority of the Parliament of Canada or not, until leave therefor has been obtained from the Board as hereinafter provided.

“(2) Upon any application for such leave the applicant shall submit to the Board a plan and profile of such crossing or junction, and such other plans, drawings and specifications as the Board may, in any case, or by regulation, require.”

Mr. Fraser's contention is that he does not require leave of the Board under this section, because he already has special statutory leave given him by chapter 29 of the Statutes of Canada 1929. This Act is entitled “An Act Respecting the Construction of a Canadian National Railway Line from New Westminster to a point on Lulu Island, in the province of British Columbia, with branches therefrom.” Section one reads as follows:—

“1. The Governor in Council may provide for the construction or completion prior to the thirty-first day of August, one thousand nine hun-

dred and thirty-two, by the Canadian National Railway Company (hereinafter called "the Company") of a line of railway (hereinafter called "the said line of railway") mentioned or referred to in the schedule to this Act."

The schedule referred to, so far as relevant, reads as follows:—

" SCHEDULE

" LOCATION

" From New Westminster crossing the North Arm of the Fraser River near Section 33, Range 4, West, Block 5 North, on Lulu Island to near Section 23, Range 6, West, Block 5 North, on Lulu Island, thence to near Woodward's Landing, with branches as follows:—

" (a) From a point North of the proposed crossing of the River Northwesterly to join with the British Columbia Electric Railway.

" (c) From a point near Section 23, Range 6 West, Block 5 North, to join with the tracks of the British Columbia Electric Railway near Tucks."

Now the argument is that the words in the above schedule "to join with the British Columbia Electric Railway" in (a) and the words "to join with the tracks of the British Columbia Electric Railway near Tucks," give the Canadian National Railways leave to join their tracks with the British Columbia Electric Railway and, consequently, that leave from the Board under section 252 is not required. It may be here noted that although the British Columbia Electric Railway is referred to in the schedule, the reference is clearly intended to be to the Vancouver and Lulu Island Railway, which is operated by the British Columbia Electric, and is the only railway in the vicinity of the proposed interchanges.

The contention that the words quoted in the schedule give the Canadian National Railways leave to connect with the Vancouver and Lulu Island Railway at Tucks and at Sussex avenue is, in my opinion, entirely unfounded. Chapter 29 is a money Bill. It authorizes the Governor in Council to provide funds for the construction of the railway described in the schedule. It does not purport to give any powers to the Canadian National Railways. The Canadian National Railways get their power to construct and operate railways from the Canadian National Railway Act, chapter 172, Revised Statutes of Canada 1927, Section 21 of which reads as follows:—

"21. With the approval of the Governor in Council and upon any location sanctioned by the Minister of Railways and Canals the company may from time to time construct and operate railway lines, branches and extensions, or railway facilities or properties of any description in respect to the construction whereof respectively, Parliament may hereafter authorize the necessary expenditure, or the guarantee of an issue of the company's securities.

"2. A copy of any plan and profile made in respect of any completed railway shall be deposited with the Board of Railway Commissioners for Canada."

Acting under this provision the Minister of Railways and Canals on January 18, 1930, recommended to the Governor in Council for approval the construction of the proposed railway, and on January 23, 1930, such approval was given. The Order in Council reads as follows:—

"The Committee of the Privy Council have had before them a report, dated January 18, 1930, from the Acting Minister of Railways and Canals, representing that the management of the Canadian National Railway Company have furnished a plan showing the proposed location

of a proposed branch line of railway of the said company, extending from New Westminster to a point on Lulu island, British Columbia, and having a total length of 32·0 miles as shown on the said plan (including rehabilitation of the presently abandoned Lulu Island branch), made up as follows:—

	Miles
Main Line, A, B, C, D to E..	14.4
Branch, B to F..	1.9
Branch, C to G..	2.1
Branch, D to H..	1.5
Rehabilitation of present line, I, G, E to J..	12.1
Total..	32.0

“The expenditure for this line, estimated at \$1,500,000, has been authorized by chapter 29 of the Statutes of Canada, 1929.

“Pursuant to the provisions of section 21 of chapter 172 of the Revised Statutes of Canada, 1927, “An Act to incorporate the Canadian National Railway Company and respecting Canadian National Railways”, the minister submits the above mentioned plan, and, on the advice of the Deputy Minister of Railways and Canals, recommends that approval be given to the construction of the said branch line of railway on the location, duly sanctioned and as indicated thereon.

“The committee concur in the foregoing recommendation and submit the same for approval.”

It will be seen from the above Order in Council that the Minister of Railways and Canals neither recommended, nor did the Governor in Council sanction, any connection with other railways. Section 21 above quoted gives the Minister no power to authorize any such connections. It simply gives him power to locate “railway lines, branches and extensions.”

Since writing the above I have had occasion to examine the plans filed with the applications in the present case, and I am surprised to find that they both show interchanges. This was not called to the Board’s attention at the hearing, and I assumed all along from the argument advanced so strenuously by Mr. Fraser, that the plans merely showed the joining of the two railways. We are, consequently, down to the position that the Canadian National Railways are themselves applying for interchanges with the Vancouver and Lulu Island Railway at Tucks and at Sussex avenue.

Before dealing with the evidence in this case it appears to me important to determine the correct principles upon which interchanges should be granted. I find in an examination of the authorities, that these principles have been greatly modified in the last few years.

In *G.T.R. v. C.P.R. and City of London*, 6 C.R.C. 327, Killam, C.C. said p. 331—

“The provisions of the Railway Act which require railway companies thus to interchange traffic at connecting points are introduced, not for the purpose of benefiting one railway company at the expense of another, but solely in the interest of the public.”

Canadian Northern Ry v. G.T.R. and C.P.R., 7 C.R.C. 289, was an application to compel the Grand Trunk and Canadian Pacific Railway Companies to issue through tickets on through rates from all points on their lines to all points on the Canadian Northern Railway by any junction a passenger wished to take. The Canadian Northern had a line serving the Muskoka District, but having no western connections was not in a position to obtain any of the

Muskoka business originating west of Toronto. In delivering judgment in this case, Mabee, C.C. said, p. 292:—

"It does not seem to me to be a reasonable proposition that one railway company should be at liberty to use the Act for the purpose of diverting to its line traffic that has been originated only at great expense and trouble by another railway or other railways, without at least showing a great preponderance of convenience to the public. It must be borne in mind that this application comes from the railway company, and no evidence was given that any inconvenience was being caused to the public from existing conditions, or that there would be any appreciable advantage to the public if the change asked for was granted; and that the change would be for the pecuniary benefit of the applicant railway company is not of itself any sufficient reason for granting the application. Under section 317, the facilities to be afforded are to be reasonable; the preference or advantage that would be given, or the delay or difference in treatment that may be permitted, is not to be unreasonable; so it is apparent that the whole section is intended to provide for the establishment of fair and reasonable business relations. Is it fair that the applicant should be permitted to make use of the Act to divert from the lines of the Grand Trunk and Canadian Pacific Railways at Toronto the tourist traffic that the last mentioned railways have spent years in developing? That this would be to the advantage of the applicant is clear, but it has not been shown that the public is to any appreciable extent interested. I agree with the argument of the applicant that the physical situation of the railways falls within subsection 4; but it has not been shown that any 'obstruction is offered to the public desirous of using such railways as a continuous line of communication.' I do not agree with the contention that existing conditions must be changed merely because a few and inconsiderate number of people might desire to change at Toronto to the applicant's lines, and I cannot regard it as reasonable or proper that railways should, in the application of this section, be put to serious loss and inconvenience when it is apparent that the real object of the application is not to offer greater facilities to the public, but to enhance the earning power of the applicant's lines."

Great Northern Railway Company v. Canadian Northern Railway Company 11 C.R.C. 424: The Great Northern had been transferring coal from Duluth via Emerson, Man., and Canadian Northern Railway to Winnipeg at a joint tariff of \$3 per ton. It desired to reduce the tariff to \$2.50 per ton, to enable it to divert the coal traffic from Fort William and Port Arthur to Duluth, and thus receive the long haul from the latter port to Emerson, confining the Canadian Northern to the short haul from Emerson to Winnipeg. The application was for an order directing the respondent to agree and concur in a joint tariff of \$2.50 per ton on coal to Winnipeg. The application was refused, Mabee, C.C., saying, p. 429—

"The application, then, is a plain and selfish attempt by the applicants to use the Board to divert traffic from the lines of the respondent to its own lines; not to furnish any better or cheaper route for the carrying of coal to Winnipeg, nor to furnish any more prompt or steady service, but solely that the applicants might obtain the revenues earned by the respondent from this coal traffic."

Gillies Bros. v. G.T.R. and C.P.R., 18 C.R.C. 44: In this case the Board came to the conclusion on the facts, that there was a substantial public interest to be served and granted the order.

Canadian Northern Railway Company v. Grand Trunk Railway Company, 20 C.R.C. 84; Sir Henry Drayton, C.C., after referring to the rule established by the decisions of the Board, that the initiating company is entitled to the benefit of the long haul, goes on to say at p. 90:—

“It is necessary for the Board, however, to determine some principle on which these interchange tracks and through rates are to proceed.

“The statute calls for reasonable and proper facilities for the interchange of traffic and for the return of rolling stock. With the large amount of regrettable duplication of railways, it certainly would not be either reasonable or proper that such interchange tracks, involving as they do at least some cost in every instance not only for construction but also for maintenance and operation, should be installed at every point possible; and, if joint rates had to be filed as and when such possible interchange tracks were put in, the only result would be to absurdly duplicate tariffs and add to the cost of railway operation without any resultant benefit to traffic conditions.”

In Canadian Northern Railway Company v. Canadian Pacific Railway Company, 20 C.R.C. 200, Sir Henry Drayton, C.C., said, p. 206:—

“Perhaps it should be stated that transfer tracks are not ordered merely because some railway asks them. Neither railway is entitled to them as a right in itself. The property and advantages of one railway should not be interfered with for the mere benefit of another. Public interest, economy of movement to the shipper, and convenience must be established.”

In this case, McLean, C., who dissented, said at p. 207:—

“If, however, it is decided that the interchange should be relocated, I am of the opinion that where the traffic is between Ottawa and a shipping point or destination common to the Canadian Pacific and Canadian Northern where interswitching facilities are provided, the company upon whose line, including private sidings tributary thereto, the traffic is loaded shall be entitled to the line haul and to the privilege of effecting the required delivery on the line of the other company by means of interswitching at destination.”

In Brantford Manufacturers v. Lake Erie and Northern Railway Company, 31 C.R.C. 1, the interchange asked for was granted between the railway of the Lake Erie and Northern and the railways of the Toronto, Hamilton and Buffalo and the Grand Trunk, in Brantford. In this case the applicants were a large number of manufacturing concerns in Brantford, whose chief object was to enable them to get proper shipments from or to Lake Erie and Northern points. The Board found as a fact, that, p. 3:—

“The putting in of the interchange applied for would be of great benefit to a number of important industries in Brantford. It is clearly in the interests of the public and will not . . . be found to be seriously prejudicial to the business of other companies; as, while it will take some business from them, it will bring new business to them.”

Provision protecting the initiating carrier in connection with the line haul was made in the order.

In the case of the Belleville Interchange Tracks, 23 C.R.C. 22, it was provided that the order should contain provision giving the line haul to the initiating carrier.

Town of Thorold v. G.T.R. and N. St. C. & T. Ry., 24 C.R.C. 21: In this case order had been refused before, but on this application it appeared that the traffic had so greatly increased as to warrant it being granted.

An examination of the cases above cited makes it quite clear that up to the time this case was decided in 1909, the Board consistently followed the principle that a paramount public necessity must be established to justify the granting of an interchange. In the words of Sir Henry Drayton, C.C., in *Canadian Northern Railway v. Canadian Pacific Railway*, 20 C.R.C. 200,—“public interest, economy of movement to the shipper and convenience must be established.”

From this point on, however, the Board's policy changed and became much more liberal in granting interchanges. The first case in which the principle was extended was the *Western Terminal Elevator Co. Ltd. v. Canadian Pacific Railway*, 31 C.R.C. 4. This was an application by the Western Terminal Elevator Company Limited of Fort William, to connect the tracks of the Canadian National Railway at Westfort with its elevator tracks on the Canadian Pacific Railway system. In his judgment, Carvell, C.C., at p. 5 says:—

“The real question at issue, however, as I view it, is whether or not an industry which is well served by one railway should be allowed the same privilege from another and competing railway. The matter has been before the Board on a former occasion, but, I believe, never definitely decided, and, without laying down any general principle to be followed in all cases, I am unable to see how the Board would be justified in refusing any elevator at the head of the lakes the right to connect, at its own expense, of course, with any railway entering that territory.

“I look upon the terminal facilities and harbour front at Port Arthur, Fort William and West Fort as being in a different position from practically any other place in Canada. They constitute one great national port, so far as the transportation of grain and grain products is concerned, and, in my opinion, any man having grain for shipment in any part of Western Canada should have the right to provide facilities for delivering it at any elevator in this region at the least possible expense.”

While the Chief Commissioner thus put his decision on the special ground just referred to, the Board followed it in the very next case which had nothing whatever to do with terminal elevators.

In the *Town of St. Jerome, P.Q., v. Canadian Pacific Railway and Canadian National Railways*, 31 C.R.C. 6, decided shortly afterwards, an order for interswitching facilities at Montford Junction was made although no great amount of traffic was offered for exchange. In delivering judgment, Carvell, C.C., said:—

“At the hearing, I referred to a case then pending before the Board, being an application of the Western Terminal Elevator Company Limited, at West Fort, which was already well served by the Canadian Pacific Railway, asking for the right to construct a branch line giving it connection with the Canadian National lines, and I stated as follows:—

“Whatever principle we adopt in the large case must be adopted in the small case. Some policy must be laid down on the question of interchange.

“Since the hearing, the application of the Western Terminal Elevator Company Limited was granted on the broad principle that every facility should be given for the handling of the grain crop at the head of the lakes.

“Probably there is not the same demand from the public standpoint in the present case as in the former one, but there is very little difference in principle. After all, the public should have some rights in deciding how its traffic should be routed, and, considering that both roads in the future will have about equal facilities, equal power, equipment and track-

age, I see no reason why either of these great railway systems should lose traffic to the other which really originates upon its own lines. The character of the service would have a very strong influence upon the routing of the traffic. Therefore, following the principle laid down in the previous case, I think the application should be granted."

In referring to this decision in a later case, *Canadian Pacific Railway v. Canadian National Railways*, 31 C.R.C. 23, McLean, A.C.C., at p. 27 said:—

"The decision in the St. Jerome Case goes very far. As the latest in a line of greatly broadening attitude in respect of the grounds on which interchange tracks should be granted, it is especially significant."

The next case decided by the Board was *Canadian Pacific Railway v. Canadian National Railways*, 31 C.R.C. 23. This was an application by the Canadian Pacific Railway Company for interchange with the Canadian National Railway track at Drumheller, in the province of Alberta. Carvell, C.C., in his judgment states the position of the Canadian National Railway Company thus:—

"The application is resisted by the Canadian National Railways very strongly on the ground that the Drumheller coal fields are industries naturally belonging to that company, they having spent many millions of dollars to put themselves in a position to handle the business, and allege that they are able to give service to all points generally to which Drumheller coal is distributed."

In granting the application the learned Chief Commissioner was very strongly influenced by the fact that Parliament had granted to the Canadian Pacific a charter to enter the Drumheller coal fields. McLean, A.C.C., however, dissented from this view, holding the opinion that the primary question was what, if any, additional necessary service will be afforded to the public by the granting of interchange facilities. In his judgment he says:—

P. 24: "The reasons for judgment of the Chief Commissioner make the matter turn, in the main, on the intention of Parliament as evidenced in legislation. I approach the matter from a somewhat different standpoint. My opinion, in the past, has been, as expressed in various cases, that the primary question is what, if any, additional necessary services will be afforded to the public by the granting of interchange facilities."

P. 25: "It has seemed to me that where there is no real complaint of inadequacy of service by the railway already in place, or allegation that additional places would be served by means of an interchange track, the argument for installation of interchange facilities is a weak one. In the present instance, the evidence as adduced by the Canadian Pacific Railway Company at Calgary in support of the application was, if the matter is to be looked at from the standpoint of this particular evidence and independent of matters of general principle established in decisions of the Board, exceedingly weak and inconclusive."

P. 26: "So far as the evidence was submitted, there was nothing, to my mind, to show that the Canadian National was not adequately handling the situation at present."

"In connection with a number of interchange cases in which I have participated, I have expressed the opinion that the company upon whose line, including private sidings tributary thereto, traffic is loaded, should be entitled to the line haul and to the privilege of effecting the required delivery on the line of the other company by means of interswitching at destination. See my dissenting opinion in the *Ottawa Case*, 20 C.R.C. 200.

"In the *Brantford Case*—interchange connection tracks between the Lake Erie and Northern and Toronto, Hamilton and Buffalo and the

Lake Erie and Northern and Grand Trunk Railways, a similar recommendation was adopted by the Board. A similar provision was also put in the Belleville-Interchange Order, 23 C.R.C. 22. When the Inter-switching order was later revised the practice of placing such limitation in the order was given up.

"I refer to this simply as bearing on the position which would seem to me to be proper, viz., that the important criterion in connection with determining whether interchange facilities should or should not be granted was whether the existing railway was unable to grant adequate facilities."

"As pointed out in the majority decision in the Ottawa Case:—

"Perhaps it should be stated that transfer tracks are not ordered merely because some railway asks for them. Neither railway is entitled to them as a right in itself. The property and advantages of one railway should not be interfered with for the mere benefit of another. Public interest, economy of movement to the shipper and convenience must be established. . . ."

"I am compelled, however, to say that the trend of the judgments in regard to interchange facilities has been steadily away from the factor which I have considered as the main criterion, and whatever my personal view may be, I am, of necessity, bound by the decisions of the Board."

"There have been a considerable number of cases in regard to interchange facilities; and it seems to me that the principle which has gradually become more manifest in connection with such applications is that where there are such physical conditions as lend themselves to interchange and there is at the same time a reasonable amount of traffic concerned, the order should be allowed."

In *Simcoe Manufacturers v. Lake Erie and Northern Railway and Grand Trunk Railway*, 31 C.R.C. 7, the Board granted the application of the manufacturers and shippers of Simcoe, Ont., for interswitching facilities near the south end of the town, where the Lake Erie and Northern Railway track crosses that of the Grand Trunk Railway, although there were three railways serving this town and there was no great demand for interswitching. In this case the judgment was delivered by McLean, A.C.C. At p. 19, he refers to what he had said in the *Drumheller Case* (31 C.R.C. 23) in connection with the installation of interchanges, and adds:—

"If I had to deal with this matter in the light of the earlier decisions of the Board, there is no question as to what my decision would have to be."

In the *Town of Ingersoll v. Canadian Pacific Railway and Canadian National Railways*, 31 C.R.C. 28, Boyce, C., who delivered the judgment of the Board, appears to have returned to the principles enunciated in the earlier cases. At p. 37 he stated:—

"The principles governing the establishment by the Board of an interchange of traffic involves, as I read the decisions of the Board upon the subject, consideration for public necessity in present traffic. Railway companies are entitled to conserve, and to hold, the traffic they build up on their individual undertaking, subject to the requirements and service of the public where they call for consideration. In such cases the business of the railway company, in the public interest, must be made subservient to the paramount interest of the public at large."

In the *Town of Pembroke v. Canadian Pacific Railway and Canadian National Railway*, 29 C.R.C. 202, McLean, A.C.C., followed his previous judgment in the *Simcoe Case* (second last referred to).

Board of Trade of Penticton v. Canadian National Railway and Kettle Valley Railway, 36 C.R.C. 130: The Canadian Pacific Railway Company by the construction of the Kettle Valley Railway and the establishment of a line of steamers on the Okanagan lake was providing service for the fruit growers of that district. The Canadian National were attempting to secure a share of this business, and in order to do so required an interchange with the Canadian Pacific Railway Company's Kettle Valley line at Penticton.

The Board ordered the interchange following the decisions in the Western Terminal Elevator Case (31 C.R.C. 4) and in the St. Jerome Case (31 C.R.C. 6).

In Board of Trade of Wayne v. Canadian National Railways, 36 C.R.C. 410, the shoe was on the other foot. Here, the Canadian Pacific Railway was applying for an interchange at Wayne, Alberta, in the Drumheller Valley coal district. This was a district exclusively exploited by the Canadian National Railways, which had built up a very large coal business there. The Canadian Pacific in its determination to secure a share of this business found it necessary to ask for this interchange with the Canadian National. The grounds advanced by the Canadian Pacific in support of the application were—

1. Public interest;
2. Economy of movement to shippers;
3. The right of shippers to select their methods of getting to their consignees or, in the case of consignees, the right to select the railway by which the goods should be shipped.

The Canadian National Railways opposed on the following grounds:—

1. It is not the intention of the Railway Act that interchange facilities should be ordered for the purpose, and the purpose only, of reducing the through rate.
2. That the Canadian National Railways should not be deprived of business which they have built up, unless the Board is clearly of the opinion that the present facilities are not ample for the purposes required, or that, if they are not ample, they cannot be made to take care of the business offering.
3. That the originating road should have the advantage of the long haul, except where a dominating public interest exists to the contrary.

McLean, A.C.C., disposes of the arguments of the Canadian National Railways in the following words p. 413:—

“While the arguments thus advanced might have much weight if the matter were being gone into *de novo*, it has to be said that practically all of these arguments have been before the Board in the various judgments rendered. See in this connection what is set out in the Board's judgment in the Penticton Case (36 C.R.C. 130).”

He then refers to a judgment of the former Chief Commissioner Drayton in Board of Trade of Moose Jaw v. Canadian Northern Railway and Canadian Pacific Railway (5 C.R.C. 117) in which the Board ordered that the transfer track in question should be constructed, unless the companies filed rates equalizing the two movements.

Now, the last pronouncement on the subject of interchange that I can find is in the application of the Town of Arnprior, Ont., for an order directing that an interchange track be constructed by the Canadian Pacific and Canadian National Railways at Arnprior, Ont. The application was allowed, McKeown, C.C., laid down the principles upon which interchange should be granted, in the following words, (p. 260, Vol. 20, Board's Judgments, Orders, etc.).

"Between one railway and another, the Board is absolutely neutral as to which company gets the bulk of the traffic, and will be careful to guide itself so that there can be no suggestion that one railway is being favoured at the expense of another. No matter how much predominance there might be in the volume of traffic carried by any particular railway in any particular district, if the public is satisfied with it, and unless there is interjected into that circumstance something detrimental to the public interest, the Board keeps its hands off and is indifferent as to who gets the business. But there may some times in the development of towns wherein a railway which is senior, has been followed by a junior road, and difficulties in marketing the output of the industries lying along that junior road present themselves because of the lack of interchange between the two railways. And when they do present themselves, and when it is apparent that it is in the interests of the public, that is to say in the interests of the business of the country and the development of the commerce of the company, that there be an interchange, and that the markets should be available as easily and as cheaply for one industry as for another, and facts are shown leading to the conclusion that the interchange should be made, the Board must deal with the situation."

Having carefully examined all the above cases, as well as others included in the Board's reports, I have been forced to the conclusion that the Board has in recent years given entirely too wide a construction to the sections of the Railway Act dealing with interchanges.

I think one can safely say that under the recent decisions of the Board, it is only necessary to show that a connection between two railways is physically possible, and that some little traffic may result to justify the granting of an interchange.

It is my view that the Board has gone entirely too far in the granting of interchanges, and that it is time it returned to the principles laid down in the earlier decisions.

Now let us examine the situation in the present case. Traffic from points on the Vancouver and Lulu Island Railway may be interchanged and delivered to the Canadian National Railways at New Westminster or Chilliwack; to the Canadian Pacific Railway at Abbotsford; to the Great Northern Railway at New Westminster; and to the Northern Pacific Railway at Huntingdon (Sumas, Wash.). The British Columbia Electric Railway is an intermediate carrier with respect to deliveries at Chilliwack, Abbotsford and Huntingdon. From the standpoint of enabling traffic from (or to) points on the Vancouver and Lulu Island Railway to reach the tracks of the other railways in that district, the necessary connections and interchange for this purpose at present exist and the interchanges applied for are not, therefore, in any way necessary to meet any existing lack of facilities for interchanging traffic between the carriers serving this district.

The principal traffic of the Vancouver and Lulu Island Railway is lumber, shingles and forest products. On this, as well as the bulk of the other traffic, joint through rates are published under which, of course, the Vancouver and Lulu Island Railway receives a division of the through rate for its portion of the haul, as does also the British Columbia Electric Railway for its portion of the haul between the Vancouver and Lulu Island Railway and the junction points with the other carriers as above set out; in other words, the traffic originates on the Vancouver and Lulu Island Railway, which naturally and properly receives a road haul and a proportion of the through rate for such service. This line is also the principal feeder for the British Columbia Electric Railway with respect to its traffic between New Westminster and Chilliwack.

The establishment of interchanges at the points applied for would result in placing the line of the Vancouver and Lulu Island Railway in a somewhat unique position, for the reason that the proposed location thereof is such that these interchanges, together with these already in existence at Vancouver and New Westminster, would bring nearly all of the Vancouver and Lulu Island Railway, and practically all the important industries located thereon, within a distance of four miles from one of the four interchanges which would then be in operation and thus automatically make applicable the provisions of the Board's General Order No. 252, dated October 26, 1918, prescribing inter-switching arrangements and tolls for application throughout Canada. In other words, the Vancouver and Lulu Island Railway would be required to receive an empty car from the Canadian National Railways at the interchange point, switch it to the industry for loading and then switch the loaded car to the Canadian National Railways at the interchange point for a charge of one cent per 100 pounds. To the extent of the success of the Canadian National Railways in soliciting such traffic for movement via their line through inter-switching, and the desires of the shippers, the Vancouver and Lulu Island Railway would receive on this traffic for the service described only one cent per 100 pounds in comparison with its division of the through rate as far as New Westminster and the earning of the British Columbia Electric Railway from New Westminster to junction points already referred to. The through rates now published are the same as would prevail through inter-switching at the proposed interchange points. To this general statement, there may be one or two minor exceptions, but any adjustment necessary to correct alleged inequalities, or unreasonableness, of present rates is a matter to be dealt with as a rate question on complaint being made to the Board following inability to obtain it upon application to the railway companies, and does not require the establishment of an interchange for correction.

The contention of counsel for the Vancouver and Lulu Island and Canadian Pacific Railways is that there can be no reason for the establishment of four interchanges with the Vancouver and Lulu Island Railway within a distance of seventeen miles, if not with the object of subjecting practically the whole of the line to the inter-switching order for the benefit of the Canadian National Railways and the diversion of traffic and revenue from the Vancouver and Lulu Island Railway as well as the British Columbia Electric Railway and Canadian Pacific Railway, and without the slightest reciprocal benefit because there are no industries on the Canadian National Railways line on Lulu Island.

Counsel for the Canadian National Railways, on this point, stated:—

“If this were an application launched by the Canadian National Railways for the purpose, as strongly suggested by Mr. Power, of duplicating facilities into this territory to take away business belonging to the other railway, it should be refused.”

He says the line is being built to provide desirable location on the south side of the river and along the waterfront for the specific purpose of developing industries there and that it would be difficult to get industries to establish there “without a connection with the Vancouver and Lulu Island Railway, or some nearby railway, that would enable them to get their traffic through an interchange for delivery to a line carrier.”

Are the interchanges applied for necessary, first, to enable the industries—yet to be established and located—on the Canadian National line, to ship over the lines of the other nearby line haul carriers, namely, the Canadian Pacific and Great Northern and Northern Pacific Railways; and second, to enable the industries on the Vancouver and Lulu Island Railway to obtain some substantial advantage or benefit in the way of lower rates, which is now denied them,

and to which they are entitled? Is there a real necessity in the general interest of the shipping public of sufficient importance to justify the Board in directing the establishment of these interchanges?

Dealing, first, with the Canadian National line, obviously there is no necessity at present for the interchanges because no industries are yet established on the line. When established, it does not require the interchanges applied for to enable the publication by the Canadian National Railways of joint through rates from points on this line in connection with the Canadian Pacific Railway, or any other line haul carrier in that district, because junctions and interchanges for this purpose are at present in existence, and it is difficult to conceive that these carriers would refuse to join in such through rates as are necessary to place the shippers on this Canadian National line in the same position as shippers on the Vancouver and Lulu Island line, or at Vancouver and New Westminster; although, in any event, this is a matter this Board could promptly remedy by an appropriate order.

It is particularly difficult to appreciate why an interchange is necessary at Sussex avenue in the interest of shippers who may, at some future time, locate on the line of the Canadian National Railways running from New Westminster to that point, because a considerable portion of this line is already within the interswitching area of an interchange at New Westminster. There certainly can be no justification for directing the establishment of the interchanges before there is an industry on the Canadian National line that could make use of them, and before it has been shown that such industry, when located and established on the Canadian National line, is at some rate disadvantage which can be corrected only by directing the establishment of the interchanges.

So far as relates to the position of the shippers on the Vancouver and Lulu Island Railway, Counsel representing them was requested to show how they are affected and the necessity for the interchanges applied for, and several witnesses representing companies located on the Vancouver and Lulu Island Railway were called for this purpose.

Mr. F. M. Tait of the Eburne Sawmills, Limited, Marpole; Mr. E. V. Ingram of the Dominion Mills, Limited, and Mr. G. H. Steeves, Western Red Cedar Mills, gave evidence concerning shipments of lumber and forest products. It may be here pointed out that on this traffic to destinations in Canada east of British Columbia, as well as to United States points, the same rates apply from Vancouver and Lulu Island Railway points as from Vancouver or New Westminster. On this traffic, constituting the bulk of the business originating on the Vancouver and Lulu Island Railway, no reduction in rates would be effected by the interchanges. To Eastern United States points the traffic moves via the British Columbia Electric Railway to Abbotsford, thence Canadian Pacific Railway to the eastern junctions of Portal, N.D., or Noyes, Minn., thence United States connections. Routing via Canadian National Railways is not provided because the traffic originates on a line owned by the Canadian Pacific Railway, and the routing is the same as when the traffic is handled out of Vancouver by the Canadian Pacific Railway. Similarly, when traffic moves out of Vancouver via the Canadian National Railways, or a local point on this line, it handles it to the eastern junctions at Fort Frances and Noyes, or Northgate, thence over United States connections, and the Canadian Pacific Railway is not permitted to participate as an intermediate carrier. While not affecting the rates, the interchanges would enable the Canadian National Railways to divert a portion of this traffic and obtain routing and handling of it over their line the same as if originating on their own line, but there was no evidence by witnesses concerning this, or other traffic, showing any inadequacy of service or facilities for the handling of the traffic. There appears to be some confusion in the minds of these witnesses and their counsel, concerning shipments to destinations on the Cana-

dian National Railways line in the United States—the Grand Trunk Western Railway—it being stated the shippers could not get such business because they could not obtain a proper rate. It may be stated that rates are published to such destinations which are exactly the same as the rates would be with the establishment of these interchanges.

To destinations in British Columbia there is a similar equality of rates on lumber, shingles, etc., but it was stated there was a disadvantage in shipping mixed cars containing sash and doors to Canadian National points, Prince George being cited as a typical example. Mileage rates apply and the distance Vancouver to Prince George is 695 miles. The rate via Canadian Pacific Railway from Marpole or Vancouver to a point of equal distance on its line is 55 cents on the lumber and \$1.08 on the doors and sash; while via Canadian National Railways, from Marpole to Prince George, witness stated he was charged 55 cents on the lumber and \$1.58 on the sash and doors. A check of the tariff published by the Canadian National Railways indicates that the same rates were formerly published as shown in the current tariff of the Canadian Pacific Railway and above set out, but the tariff was amended, resulting in an increase in the rate on sash and doors. The matter has been taken up with the railway and the Board is advised that they are amending their tariff effective December 17, reducing the rates on these commodities to the same basis as published in the Canadian Pacific Railway tariff. This is a rate situation, the correction of which is quite irrelevant to the question of the establishment of an interchange.

These witnesses all stressed the benefit they would receive through the establishment of interchanges in selling lumber to the Canadian National Railways for that company's own use. When this is taken delivery of by the Canadian National Railways at New Westminster, the Vancouver and Lulu Island Railway, of course, charges its local rate of five cents per 100 pounds, but the same is true with regard to similar traffic delivered to either the Canadian Pacific Railway or the Great Northern Railway at New Westminster. All the witnesses stated they are selling this material to the Canadian National Railways, but considered they would sell more if the five cent charge were reduced to an interswitching rate of one cent, because then they would make delivery to the Canadian National Railways at the interchange point under the interswitching rate. The interchange would not affect this railway material for delivery to the Canadian Pacific or Great Northern Railways on which the charge of the Vancouver and Lulu Island Railway of five cents would still be applicable. They pointed out that this rate involves a charge of approximately \$25 per car, while a mill located on the Canadian Pacific Railway tracks in Vancouver can make delivery to the Canadian National Railways for a switching rate of \$8 to \$8.50 per car, and this difference represents their handicap in endeavouring to secure orders from the Canadian National Railways. The Canadian Pacific and Great Northern Railways also buy from mills on the Vancouver and Lulu Island Railway and it is stated that the purchasing departments of these companies absorb the charge of the Vancouver and Lulu Island Railway. The Canadian National Railways could do the same if they desired. There is nothing on the record showing how much the mills on the Vancouver and Lulu Island Railway are selling either to the Canadian National or the Canadian Pacific and Great Northern Railways. In this matter of sales of material to the railway companies, the geographical location of the mills is bound to result in some mills being more favourably situated than others. When a mill is not located on the line of the railway company to whom it is selling, it is always at a disadvantage, so far as freight cost is concerned, as compared with a competitor located on that railway. These mills are in exactly the same position with respect to sales to the Canadian National Railways as their competitors located on the Canadian Pacific Railway east of Vancouver at such points as Hastings, Barnet, Port Moody, Haney and Hammond, with a freight cost to Vancouver ranging from

4½ cents to 5½ cents per 100 pounds. The illustration may be carried further by reference to mills on the Canadian Pacific Railway further east, both on the main line and in the Crownsnest district, from which a rate very much higher would require to be paid if they made shipments for delivery to the Canadian National Railways at the nearest point thereto on that line, for example, Calgary. In so far as this involves the proposition that a producer's cost disadvantage should be equalized or diminished in the freight rate, or accomplished through a direction to establish an interchange for such purpose, it may be stated that this transcends the powers or functions of the Board. The interpretation of the Act in this respect and the position taken by the Board has been set out in a great many of its decisions, and may be summed up by the following citations from some cases, which position has been uniformly followed:—

"This phase of the application is in reality a plea that section 315, the 'equality' clause, should be used to bring about an equalization of costs of production. This clause is, however, concerned with traffic conditions. The allegations regarding 'similar factories' are of no value unless the 'similar factories' are, under similar circumstances and conditions of traffic, accorded more favourable treatment. This has not been established. It is no part of the obligations of the railways, under the Railway Act, to equalize costs of production through lowered rates so that all may compete on an even keel in the same market. This phase of the complaint fails." (*Canadian Portland Cement Co. v. Grand Trunk and Bay of Quinte Ry. Cos.* 9 C.R.C. 210).

"The situation which this phase of the case presents to the Board on the basis of the facts summarized is made up of the combination of trade competition, situation advantage with its attendant low cost of raw material, and efficient water competition. None of these conditions are created by the action of the railways before the Board. Railways are not required by law, and cannot in justice be required, to equalize natural disadvantages such as location, cost of production and the like." (*Canadian Oil Cos. v. Grand Trunk, Canadian Pacific and Canadian Northern Ry. Cos.*, 12 C.R.C. 356).

"A railway company is not called upon so to adjust its rates that the shipper will always be able to carry on his business at a profit. The rate is only one item in the shipper's costs. The obligation of the railway company is to charge a reasonable rate. It is not called upon, through the reduction of the rate, to guarantee that the business will be carried on at a profit. In other words, the needs of the business and the way in which it is carried on are not the measure of the reasonableness of the rate." (*Western Retail Lumbermen's Association v. Canadian Pacific, Canadian Northern and Grand Trunk Pacific Ry. Cos.* 20 C.R.C. 158).

"The Board has held that it is not concerned with equalizing costs of production, and that in matters of rates its jurisdiction relates to reasonableness of the rates." (*Dominion Millers Association, Toronto Board of Trade and Montreal Corn Exchange v. Canadian Freight Association*, 21 C.R.C. 87.)

"It (the railway) contends that the application is simply one to offset the natural disadvantages the applicants are under. In this connection, it points to the Board's decision in *Imperial Rice Milling Co. v. C.P.R.*, 14 Can. Ry. Cas. 375, as upholding the position that the Board is not concerned with equalizing the cost of production. The Board has many times said that it is not concerned with equalizing costs of production. It has many times affirmed that its jurisdiction in connection with applications is concerned with reasonableness of rates, not with the rate of profit which the applicant is making." (*Hudson Bay Mining Co. v. Great Northern Ry. Co.* 16 C.R.C. 259.)

"In so far as these different considerations are concerned, the Board can give effect to none of them in connection with any rate question. It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions. They are concerned simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes." (*Canadian China Clay Co. v. Grand Trunk, Canadian Pacific and Canadian Northern Cos.* 18 C.R.C. 348.)

Mr. A. Harvey, of Hudson Harvey Limited, Produce Brokers, complained concerning rates on alfalfa hay to Marpole from interior British Columbia points, Lytton and east, on which he stated the rate to Marpole was six cents over the Vancouver rate, which was prohibitive; that it could be trucked from Vancouver at a lower cost; and that large quantities had been brought in from United States points in the Yakima district because of the high rates from British Columbia points. Mr. Harvey also referred to shipments of potatoes and timothy hay from points on the Vancouver and Lulu Island Railway. As indicating that this also is a rate matter and should be properly so dealt with, the solution of which is not to be found by establishment of the interchanges applied for, it may be pointed out that this six cent rate difference, Marpole over Vancouver, applied to shipments from both Canadian Pacific and Canadian National points. If the proposed interchange resulted in the Canadian National Railways applying the Vancouver rate this would not fully meet the complaint as to shipments from local points on the Canadian National Railways and the complaint would not in any way be taken care of from Canadian Pacific Railway points, as, quite independent of the interchange, the rate situation complained of with respect to Canadian Pacific Railway points can only be met by a change in the tariffs of that company. Asked if establishment of Vancouver rates to Marpole would solve all his difficulties, Mr. Harvey replied: "Practically one hundred per cent." Since the hearing, effective November 9, 1931, the Canadian Pacific Railway has amended its tariff and published rates on hay to Marpole from British Columbia points which are the same as to Vancouver. The Canadian National Railways have taken similar action in an amendment to their tariff effective November 10, 1931. The reference on the record to outward shipments of potatoes and timothy hay was very indefinite. Application should be made to the carriers showing full particulars as to points of origin and destinations, and the adjustment the companies made in the hay rates to Marpole indicates that the matter would be satisfactorily disposed of, but if not, it can be made the subject of a complaint to the Board.

Mr. P. J. Russell, of the Pacific Meat Company, Marpole, stated he had no complaint regarding rates. The only benefit he suggested his company might obtain from the establishment of an interchange was possibly a better service, but there is no proof of this and he also admitted receiving a much improved and satisfactory service recently in the handling of livestock from New Westminster to Marpole.

The evidence of Mr. A. W. Clark, of the British Columbia Concrete Company, indicates that the railway companies have, upon application, published Vancouver rates on his traffic from Marpole and that he has no complaint concerning rates that would be in any way affected by the interchange.

The evidence of Mr. W. Walker, of the Barrett Company, Limited, indicated that they had satisfactory commodity rates from Marpole to both Canadian Pacific and Canadian National destinations covering the most of their traffic. He stated, however, that they were at a disadvantage as compared with their competitors in Vancouver with respect to mixed carloads of hardware and their materials. From the somewhat indefinite record, it is understood that the

situation is that from Vancouver, class rates apply and the provisions of rule 10 of the Canadian Freight Classification govern the mixed carload shipments; that from Marpole there are no through class rates published to Canadian Pacific and Canadian National points, thus subjecting such shipments to a combination of the rates to and from New Westminster. The same comment is applicable here as made above concerning the hay traffic referred to by Mr. Harvey, *i.e.*, the establishment from Marpole of the same rates as in force from Vancouver on mixed carloads to both Canadian Pacific and Canadian National destinations would not be accomplished by the establishment of an interchange at Tucks. The Traffic Department of the Board is advised that the Canadian Pacific are arranging to publish the Vancouver class rates from Marpole to points on its line and, no doubt, the Canadian National will follow suit, which will satisfactorily dispose of this question.

Some other witnesses made statements of a very general character in support of the application for interchange, but they gave no evidence showing that industries that may establish themselves on the Lulu Island line of the Canadian National Railways cannot obtain through the connections with other carriers already in existence, just as favourable joint through rates as could be accomplished through the interchanges applied for.

In considering the granting of interchange in this case, one must keep in mind the words of the late Chief Commissioner Mabee in the case of Canadian Northern Railway v. Grand Trunk Railway, 7 C.R.C. 289, with which, if I may be permitted to say so, I most emphatically agree. He said (p. 292):

"It does not seem to me to be a reasonable proposition that one railway company should be at liberty to use the Act for the purpose of diverting to its line traffic that has been originated only at great expense and trouble by another railway or other railways, without at least showing a great preponderance of convenience to the public."

Mr. McMullen, on behalf of the Canadian Pacific Railway Company claims that the applications in this case are for the sole purpose of securing to the Canadian National Railways a share of the business now held by the Vancouver and Lulu Island Railway.

Mr. Fraser, on behalf of the Canadian National Railways, scouts the idea and says that the sole object is to offer additional inducement to industries to locate south of the North Fraser along their new line, where they hope to build up a large industrial area.

It is impossible for me to accept the suggestion that the Canadian National Railways expended a million and a half of money on this new line, which at the present time does not possess a single industry, with the sole idea that they were to sit down and wait for industries to be built along it. No doubt they hope that some time in the future industries will be established, but, in the meantime, the purpose clearly is to secure a share of the Canadian Pacific Railway Company's business.

I might add that tactics of this nature are by no means peculiar to the Canadian National Railways. The Canadian Pacific Railway Company is equally an offender as anyone who has any knowledge of railway construction, *e.g.*, in the Drumheller Valley, knows. The efforts of one railway to invade territory which the other has developed is responsible for a great deal of the unnecessary duplication of railways which exists in Canada to-day, and nothing, in my opinion, encourages the practice more than too much liberality in the granting of interchanges.

The applications will be dismissed.

December 12, 1931.

Commissioner Stoneman concurred.

ORDER No. 47851

In the matter of the application of the Canadian National Railway Company, for leave to join its Lulu Island Branch with the Vancouver and Lulu Island Railway in D.L. 164, Gp. 1, N.W.D., in the Municipality of Burnaby, and at Tucks, in the Province of British Columbia;

And in the matter of the application of the North Fraser Harbour Commissioners, the Corporation of the City of Vancouver, the Corporation of the Township of Richmond, the Corporation of the District of Burnaby, the Board of Trade of the Municipality of Richmond, the Associated Boards of Trade of the Fraser Valley, the Transportation Bureau of the Vancouver Board of Trade, the South Burnaby Board of Trade, the Eburne Saw Mills, Limited, the Burke Lumber Company, Limited, the Dominion Mills, Limited, the British Columbia Concrete Company, Limited, the British Columbia Red Cedar Shingle Company, Limited, and the Marpole Grain Company, Limited, for an Order that the lines and tracks of the Canadian National Railways and the Vancouver and Lulu Island Railway Company, shall be connected as requested in the two applications of the Canadian National Railway Company, dated September 15, 1930, so as to permit of the safe passage and convenient transfer of engines, cars, and trains from the tracks of the one railway to the other, and that such connection shall be maintained and used.

Files Nos. 37381.3 and 37381.4

WEDNESDAY, the 16th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Vancouver, October 21 and 22, 1931, in the presence of counsel for and representatives of the Canadian National Railways, the Canadian Pacific Railway Company, the North Fraser Harbour Commissioners and other public bodies and industries interested, the City of Vancouver, the Vancouver and Lulu Island Railway Company, and the British Columbia Electric Railway Company, and what was alleged,—

The Board orders: That the applications be, and they are hereby, dismissed.

C. P. FULLERTON,

Chief Commissioner.

Application of the Town of Truro, N.S., for an Order authorizing the construction of a subway under the Canadian National Railways station yards at Forrester Street to Brunswick Street, Truro, N.S.

File 37587

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

This matter was heard at the recent sittings of the Board at Truro. It had already been brought up in a somewhat informal way at the sittings of the Board on September 23, 1930.

At the recent sittings plans were submitted both for an overhead crossing and for a subway. The overhead crossing provides for the crossing of ten tracks, and there is also provision for an additional track. The same number of tracks is covered in the plan of the subway.

The town estimates the overhead structure would cost \$183,000 while the cost of the subway is estimated at \$210,000. The railway company points out that the estimated cost of the overhead structure does not provide for land damages. It is also pointed out that estimates are not given as to damages in connection with the subway proposition. If there is to be grade separation, the railway prefers the overhead structure, while the preference of the town is for a subway.

There is an element of uncertainty as to whether the town or the railway is senior at the point in question. It does not appear to be necessary to go into this phase of the matter in detail at present.

The town is asking for a subway and is urging that the cost of the work should be provided for by the Grade Crossing Fund and by the railway. The situation in regard to the Grade Crossing Fund was explained at the hearing. No contention was advanced by the town that the work should be undertaken as part of the Unemployment Relief program. The railway stated clearly and emphatically that its finances were in such condition that it was not in position to make any contribution to a grade separation at the point in question. It had already made this clear in connection with the hearing of the application for the construction of a subway at what is known as Bogleman's Crossing, within the Corporation of the Town of Truro, file 27218.46.

The financial position of the Canadian National as set out at the hearing was not contested by the applicant. In view of the fact that the railway is not in a position to take on the burden which the town desires, it would be futile for the Board to make any order directing it to take it on. Under the existing circumstances, the application cannot be granted.

December 15, 1931.

Commissioner Norris concurred.

ORDER No. 47873

In the matter of the application of the Town of Truro, Nova Scotia, hereinafter called the "Applicant," for an Order authorizing the construction of a subway under the Canadian National Railways' station yards at Forrester Street to Brunswick Street, Truro.

File No. 37587

THURSDAY, the 17th day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Truro, December 2, 1931, in the presence of counsel for and representatives of the applicant and the Canadian National Railways, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the City of St. Catharines, Ont., for a rehearing of the matter of improvements to approaches and wing walls of the overhead bridge on Queenston Street, St. Catharines, on the Niagara, St. Catharines and Toronto Railway, upon which matter Order No. 41492, of October 1, 1928, issued.

JUDGMENT

File 329

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Order No. 39242, of June 22, 1927, issued approving plans and profile, dated September 27, 1926, showing improvements of the approaches and wing walls of the overhead bridge on Queenston street, in the city of Ct. Catharines, where the highway was crossed by the railway lines of the Niagara, St. Catharines and Toronto Railway Company. It was provided that the cost of said improvements were to be borne and paid three-quarters by the railway company and one-quarter by the applicant, the said three-quarters being estimated at \$9,950.25. The total cost as estimated by the applicant amounted to \$13,267.

The order further provided that "the street pavement, sidewalks, curbs, and other ordinary highway works to be constructed and maintained by the applicant."

There arose thereafter the question who was to bear the cost of paving the bridge floor. The railway, in a letter dated October 12, 1927, contended that it should not be called upon to contribute to this; and it was stated on the other hand that the city thought there should be such contribution.

Following this, the city solicitor of St. Catharines, on November 22, 1927, was written to saying that matters of the same kind as were involved between the City of St. Catharines and the Canadian National Railways had been before the Board on several occasions, and an established practice had been laid down, the established practice being that the municipalities should maintain the pavements where grade separations were made. Following written submission by the city solicitor, the Board wrote Mr. Kingston, the city solicitor, under date of December 24, 1927, as follows:—

"File 329, Queenston Street Bridge, St. Catharines, C.N.R.

"DEAR SIR,—Referring to the above matter and the question of the cost of surfacing, I am directed to point out that in the *City of Hamilton vs. C. P. and T., H. & B. Ry. Cos., 25 Can. Ry. Cas. 379*, the late Chief Commissioner Carvell, at p. 384, points out the burden which may be placed on the railway where its construction has necessitated a cut in the highway. The following words are pertinent:—

'I do not think that they (the railway company) should be held responsible for placing a covering or surfacing on the substructure thus provided of any different construction or durability than that which they found when the road was severed; and, having provided such a structure with such a covering, I think the burden should be on the municipality to pave it or cover it with any material which, in their judgment, might be necessary to take care of the traffic in that particular locality.'

"I am, therefore, directed to state that on the submissions made, the Board is of opinion that an amending order is not necessary."

Further correspondence took place and under date of October 1, 1928, the Board issued Order No. 41492 amending Order No. 39242. The amendment was effected by providing for the construction and maintenance, by the applicant municipality, of the street pavement, sidewalks, curbs and other ordinary highway works; also including the paving of the bridge floor. The interpretation given by the Board was thus incorporated in the order.

Exception was taken by the city solicitor to the action of the Board on the ground that the municipality had not had an opportunity to speak to the amendment of the order.

Correspondence continued until October 11, 1928. On this date, the city solicitor was written to at some length referring to the correspondence which had taken place giving information as to the Board's practice, and stating that "in the opinion of the Board there is no room for dispute as to the liability of the city for paying the bridge and meeting the cost of maintaining it." It was further set out that when request had been made, on behalf of the city, as to whether an order had been made, advice was given that no order had been issued, and that the Board's practice was well established in this regard; but when it was made to appear to the Board that the city declined to be governed by the Board's established practice and, following that, it refused to pay its indebtedness to the railway company, the Board deemed it proper to make the order which has been the subject of correspondence. The letter then continued:—

"that if representations are made to the Board which would seem to entitle the city to a rehearing, an application to rescind may be made; but until the Board is advised of some reasonable ground for rehearing, the application to rescind cannot be acceded to."

The next communication in the matter was on January 30, 1931.

The following is excerpted from the discussion taken part in by Mr. Seymour, who appeared for the City of St. Catharines:—

"The ASSISTANT CHIEF: The next question involved at present is, who should be responsible for the cost of the paving.

"Mr. SEYMOUR: The paving of the bridge floor?

"The ASSISTANT CHIEF: It narrows down to that.

"Mr. SEYMOUR: Yes. I do not know how far the Board is prepared to go to-day, whether we are arguing to have a right to re-hear, or whether the Board is re-opening the whole question."

The record in this case, as well as the practice of the Board, establish that Order No. 39242 was sufficiently clear to cover the obligation as to paving.

On consideration, I do not think that justification has been shown for amendment of Order No. 41492 as requested and the application is, therefore, dismissed.

December 15, 1931.

Commissioner Norris concurred.

ORDER No. 47885

In the matter of the application of the City of St. Catharines, Ontario, for a rehearing of the matter of improvements to approaches and wingwalls of the overhead bridge on Queenston street, St. Catharines, on the Niagara, St. Catharines and Toronto Railway, upon which matter Order of the Board No. 41492, dated October 1, 1928, issued. File No. 329

FRIDAY, the 18th day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, November 24, 1931, in the presence of counsel for and representatives of the City of St. Catharines and the Niagara, St. Catharines and Toronto Railway Company, and what was alleged,—

The Board orders: That the application be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Humboldt Board of Trade, Humboldt, Sask., for an order directing the establishment of transfer facilities between the Canadian Pacific Railway and the Canadian National Railways, at Humboldt.

File No. 37514.2

Heard at Saskatoon on October 7, 1931.

FULLERTON, CHIEF COMMISSIONER:

This is an application of the Humboldt Board of Trade for an Order directing the construction of an interchange track between the Canadian Pacific and Canadian National Railways at Humboldt, Sask.

The Canadian Pacific line is the Lanigan-Prince Albert running north and south.

Under an agreement dated September 7, 1930, the Canadian Pacific Railway Company obtained from the Canadian National Railways the use of its lines and facilities within the town of Humboldt. The only industry which would be advantaged by the interchange asked for is McNabb Flour Mills, Limited, which does a large gristing trade with the farmers.

The evidence shows that in 1930 no cars were received by this company over the Canadian National Railways, but the bulk of their grain came in by truck from Canadian National points. The crops in southern Saskatchewan this year were very poor, and considerable quantities of feed were required by the farmers in that portion of the province.

A. P. McNabb, who was called on behalf of the McNabb Flour Mills, Limited, said at p. 3019 of the evidence, Vol. 589:—

“We have made arrangements with Pool elevators from Southey to Saskatoon on the Canadian Pacific Railway, that the farmers can bring their wheat into a Pool elevator at their local point, and send the tickets up to the Pool elevator at Humboldt. It is only about 150 feet across from our mill, and we can take wheat from the Pool elevator there and grind it, and send the flour back to whatever point it comes from. It costs us \$35 a car to transfer that from our mills to the Canadian Pacific Railway tracks. That \$35 would practically go to the farmer, but for that cost, because it took practically one and a half days to load that with a truck, whereas we can load it from our warehouse in a couple of hours at practically no cost except the switching charge, which is about \$3 or \$5.”

Under this arrangement the McNabb Flour Mills, Limited, shipped to Canadian Pacific points only nine cars during the last eight months, and Mr. McNabb says they have orders for only four more.

The conditions giving rise to this business are probably temporary and, in my opinion, would not justify making an order requiring the building and maintenance by the railways of exchange tracks. So far as the evidence shows, there would not be enough business over an interchange to pay for its construction, maintenance and operation.

The application is dismissed.

DECEMBER 16, 1931.

Commissioner Stoneman concurred.

ORDER No. 47863

In the matter of the application of the Humboldt Board of Trade, Humboldt, Saskatchewan, for an Order directing the establishment of transfer facilities between the Canadian Pacific and Canadian National Railways.

File No. 37514.2

THURSDAY, the 17th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Saskatoon, October 7, 1931, in the presence of counsel for and representatives of the Humboldt Board of Trade, the Municipality of Humboldt, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged,—

The Board orders: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Complaint of Lever Brothers, Limited, Toronto, Ont., re freight rate on Cottonseed and Peanut Oil, Carloads, from Montreal, Que., to Winnipeg, Man.

File No. 37611

JUDGMENT

BY THE BOARD:

Lever Brothers, Limited, made complaint to the Board on October 18, 1930, concerning rate of 75 cents per 100 pounds published, effective October 21, 1929, on cottonseed and peanut oil, in carloads, from Montreal wharf to Winnipeg. The railways filed replies; the complainant also made further written submissions and the matter was heard at sittings of the Board in Toronto on November 23, 1931.

Cottonseed and peanut oil in crude form is imported into Canada from the United States and the Orient, and the refining points in Canada are Montreal, Toronto, Hamilton and Winnipeg. The refined product is used by packing houses for edible purposes in various ways, being put into lard substitutes, etc. Their value is not a matter of record. The refiners at Winnipeg are the Swift Canadian Company and the Harris Abbatoir, who also have packing plants at some other Western Canadian points, so these are complainant's competitors for the supply of refined oil at such points as Calgary, Edmonton and Prince Albert.

Complainant sets out that with a 75 cent rate from Montreal to Winnipeg, the oil can be refined at Winnipeg and shipped from that point to Calgary at a rate of 98 cents, which is the regular class rate, a total of \$1.73; that similar oil, imported by complainant via Montreal is subject to a rate of 29 cents to Toronto and \$2 thence to Calgary, a total of \$2.29, and states: "This results in a discrimination of 56 cents per 100 pounds in favour of Winnipeg as against Toronto." Complainant further states:—

"There is a 75 cent rate from Vancouver to Winnipeg and to Toronto, and, on oil imported via Vancouver and refined at Winnipeg, Winnipeg

enjoys a geographical advantage concerning which we have no complaint. Why, then, should a geographical advantage enjoyed by Toronto on oil imported via Montreal be removed by the publication of a rate that is unnecessary and discriminatory."

Prior to publication of the 75 cent rate from Montreal, the rate from that point to Winnipeg was \$1.14, Winnipeg to Calgary 98 cents, total \$2.12; from Montreal to Toronto 29 cents, Toronto to Calgary \$2, total \$2.29. The publication of the 75 cent rate from Montreal increased the rate difference as between the Toronto and Winnipeg refiner in supplying the Calgary market from 17 cents to 56 cents per 100 pounds, provided the crude oil is imported through Montreal. In this connection, however, it may be pointed out that with respect to oil imported through Vancouver or Seattle, there is, and has been for some ten years, a rate difference of 56 cents as between the Toronto and Winnipeg refiner in supplying the Calgary market; in other words, with respect to importations through Seattle or Vancouver there is a rate of 75 cents to Winnipeg and, consequently, the same rate difference as created by the establishment of the same rate from Montreal. The 75 cent rate from Seattle and Vancouver to Winnipeg and Toronto has been in effect since 1921 without complaint and is not now complained of.

With respect to the 75 cent rate from the Pacific coast, this was first published from San Francisco in a tariff schedule issued September 19, 1921, effective November 3, 1921; was followed by the publication of the same rate from Vancouver in a tariff schedule issued October 18, 1921, and made effective November 3, 1921; followed by publication of the same rate from Seattle effective December 1, 1921.

It appears there has been no movement through Vancouver, at least for some considerable time past, owing to lack of storage or tankage facilities there, although there has been a substantial movement through Seattle. The railway companies state they publish the same rate from Montreal to Winnipeg as in effect from Seattle in order, if possible, to attract some of the tonnage via the port of Montreal as against United States ocean ports; in other words, the Montreal rate is a competitive one. Complainant stated in a letter dated January 8, 1931:—

"We do not believe the Montreal-Winnipeg rate is justified by Vancouver or Seattle competition because there has not been any considerable movement through the Pacific ports for a year or more."

As there were no data before it concerning the actual movements of this traffic, the Board requested the railway companies to obtain and submit the tonnage figures for the years 1927, 1928, 1929 and 1930.

With respect to crude cottonseed oil during this period, there was a movement of 2,774 tons into Winnipeg, of which only 38 tons was imported via Montreal during the year the 75 cent rate was established, there being no movement through Montreal in 1927, 1928 or 1930. The bulk of the tonnage originated at Southern United States points and paid rates into Winnipeg considerably in excess of the 75 cent rate, ranging from 85 cents to \$1.09.

So far as relates to the crude peanut oil, during this period there was a movement of 5,620 tons into Winnipeg over the Canadian Pacific and Canadian National Railways, and in addition, 51 carloads (tonnage not given) over the Great Northern Railway. Of this, only 607 tons was imported via Montreal, which moved during the year the 75 cent rate was established, there being no movement through Montreal in 1927, 1928, or 1930. The Great Northern shipments were divided, 12 cars from San Francisco and 39 from Seattle. Of the 5,620 tons brought over the Canadian Pacific and Canadian National Railways, 4,109 tons moved through Seattle, 2,988 of which was in 1930, and 142 tons from San Francisco.

The movement of the refined oil is as shown below:—

REFINED COTTONSEED OIL—TONS				
	1927	1928	1929	1930
<i>To Calgary, Alta.—</i>				
From Winnipeg, Man.	91	68	—	—
From Toronto, Ont.	—	—	—	—
<i>To Edmonton, Alta.—</i>				
From Winnipeg, Man.	31	—	—	—
From Toronto, Ont.	30	60	60	30
<i>To Prince Albert, Sask.—</i>				
From Winnipeg, Man.	29	30	—	—
From Toronto, Ont.	—	—	—	—

REFINED PEANUT OIL—TONS				
	1927	1928	1929	1930
<i>To Calgary, Alta.—</i>				
From Winnipeg, Man.	—	30	30	60
From Toronto, Ont.	—	—	182	150
<i>To Edmonton, Alta.—</i>				
From Winnipeg, Man.	212	245	245	213
From Toronto, Ont.	60	60	91	150
<i>To Prince Albert, Sask.—</i>				
From Winnipeg, Man.	30	30	60	60
From Toronto, Ont.	—	—	60	60

The Winnipeg refiner can bring in the crude oil via the Pacific coast at a 75 cent rate and the establishment of the same rate from Montreal with the object of enabling importation through that port in competition with Seattle, does not alter the competitive situation existing between the Toronto and Winnipeg refiners, or create any rate difference between them that did not exist apart from and independent of the rate from Montreal. The Board cannot, therefore, agree with the statement of complainant that a geographical advantage enjoyed by Toronto on oil imported via Montreal has been removed by the publication from Montreal to Winnipeg of a rate that results in the same combination of rates with respect to shipments of the refined oil as already exists when it is imported via the Pacific coast. There was a small tonnage to Winnipeg via Montreal in 1929, but there have been no shipments through that port since then.

The rate difference of 56 cents with respect to the combination of the inward crude rate and the refined outward as shown in the case of Calgary, which, it is alleged, discriminates against the Toronto refiner and which exists independent entirely of the Montreal rate, is, obviously, due to the geographical location of the latter who is 2,054 miles from the Calgary market as compared with 823 miles from Winnipeg. The Board has no power to regulate tolls for the purpose of equalizing cost of production, or geographical, climatic or economic conditions.

Canadian Portland Cement Co. v. Grand Trunk and Bay of Quinte Ry. Cos. 9 C.R.C. 210.

Canadian Oil Cos. v. Grand Trunk, Canadian Pacific and Canadian Northern Ry. Cos. 12 C.R.C. 356.

Western Retail Lumbermen's Association v. Canadian Pacific, Canadian Northern and Grand Trunk Pacific Ry. Cos. 20 C.R.C. 158.

Dominion Millers Association, Toronto Board of Trade and Montreal Corn Exchange v. Canadian Freight Association. 21 C.R.C. 87.

Hudson Bay Mining Co. v. Great Northern Ry. Co. 16 C.R.C. 259.

Canadian China Clay Co. v. Grand Trunk, Canadian Pacific and Canadian Northern Cos. 18 C.R.C. 348.

The 75 cent rate from Montreal is a competitive rate and, therefore, no measure of the reasonableness of the rate on refined oil from Toronto to Winni-

peg or Calgary, and in view of the data concerning the tonnage movements, it is not proven that complainant's ability to compete with the Winnipeg refiner has been rendered more difficult by the rate complained of.

Upon what is before the Board in the record on this case, it considers that the complaint should be dismissed.

A. D. CARTWRIGHT,
Secretary, B.R.C.

OTTAWA, December 16, 1931.

ORDER No. 47878

In the matter of the complaint of Lever Brothers, Toronto, regarding freight rates on cottonseed and peanut oil, in carloads, from Montreal, Quebec, to Winnipeg, Manitoba.

File No. 37611

FRIDAY, the 18th day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, November 23, 1931, in the presence of counsel for and representatives of Lever Brothers, the Canadian Pacific Railway Company, the Canadian National Railways, and the Canadian Freight Association, and what was alleged,—

The Board orders: That the complaint be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of the Department of Public Works, Province of New Brunswick, re alleged excessive freight charges assessed by the Canadian National Railways on carload shipments from Portage, P.E.I., to Rexton and Richibucto, N.B.

File 19475.112

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

During the months of August, September, and October, 1930, the Department of Public Works of the province of New Brunswick shipped 765 cars of gravel from their pit at Portage to Rexton and Richibucto, said shipments being over the Canadian National Railways. A portion of the haul, from Kent Junction to the destinations named, was over a branch line on which there was a restriction to gross limit load of 115,000 pounds per car.

It is claimed by the applicant that a representative of the railway company promised that freight charges would be based on the scale net weight as ascertained en route at Moncton. There being no facilities for weighing the gravel at point of shipment, the applicant states it was necessary to estimate the weight loaded; and the applicant pointed out that owing to moisture content, etc., there might be a variation ranging from 2,700 to 3,300 pounds per cubic yard. It appears that the weight loaded was, in most cases, less than the minimum weight on which charges were assessed by the railway based on the tariff provision later referred to herein.

It is alleged that a representative of the railway company promised that the traffic would be handled on the basis of actual weights as obtained over the Moncton scales, regardless of the minimum weights as provided for in the

governing tariff. The railway company states that no such promise or assurance was given. The railway company also points out that it is not within its power to authorize or make any variation from the provisions of the governing legal tariff on file with the Board.

It is noted that section 331 of the Railway Act stipulates, with respect to a tariff such as is here in question, that when such tariff becomes legally operative the company shall thereafter, until such tariff is disallowed or suspended by the Board or superseded by a new tariff, charge the toll or tolls as specified therein.

The rulings on erroneous rate quotations are cognate to the present discussion. Where an applicant had, in error, been quoted a rate of 50 cents per 100 pounds, where the rate legally published between the points in question was 95 cents per 100 pounds, the Board ruled that the company was obliged under the Railway Act to charge and collect the rate legally filed and published. It is further set out that the employees of the railway company had no power to vary from the rates so legally filed and published, and that the Board had, therefore, no power to direct a refund of the difference between the rate legally filed and published and the rate which, on the submissions made in the case in question, had been quoted to the applicant by an employee of the company. *Re Erroneous Rate Quotations, 15 Board's Judgments and Orders at p. 39.*

The Board has no power to change the provisions of a tariff as to a past transaction. The question involved is one of interpretation of the tariff as to what its provisions mean.

The tariff provision governing minimum weight on this traffic during the period the movement took place reads as follows:—

Minimum weight will be 90 per cent of the capacity of the car, but in no case less than 60,000 pounds. (See exceptions.)

Exceptions

When cars are loaded to their full cubical capacity and will not contain the above minimum, the actual weight will be applied, but in no case less than 60,000 pounds.

Minimum carload weight will also be subject to restrictions issued by individual carriers governing the maximum clearance, loading or track bearing limitations of the carriers parties to this tariff.

It will be observed it is stated that the minimum weight shall be 90 per cent of the capacity of the car, but in no case less than 60,000 pounds; and then reference is made to exceptions, and under the exceptions it is set out that such minimum weight will be governed by track bearing limitations.

The question arises as to the minimum weight under the tariff and the exceptions quoted. The railway contends that the minimum weight is 90 per cent of the maximum capacity weight as restricted by the limit load, but in no case less than 60,000 pounds. On consideration, this appears to be the correct interpretation of the tariff.

At the hearing counsel for the applicant, when asked whether there was any contest on the question of the charges assessed being in accordance with the tariff in existence at the time, stated that the railway "in the strict legal sense of the interpretation of the tariff . . . are possibly right."

In the written submissions prior to the hearing application was not made for protection of the actual weights, but a suggested basis of settlement was given as "using as a minimum load, 80 per cent of the said track limit load."

At the hearing counsel for the applicant admitted that the 80 per cent proposal was not supported by the tariff. He suggested that from the standpoint of equity, the minimum weight be based on 90 per cent of the stencilled capacity of the car and not on the capacity of the car as restricted by the limit load.

Detail was submitted by both parties in regard to the tare weight, minimum weight, leeway between the minimum weight and the capacity of the car before the overloading point would be reached. It does not appear, however, to be necessary to go into an analysis of this material in the present connection. What is involved is: What does the tariff say, and what is the proper interpretation of it?

What is being asked for is a retroactive modification to be used as a basis in settlement of an outstanding account. What is contended for by the applicant is not in accordance with the correct interpretation of the tariff. If it were established that any provision, or provisions of the existing tariff were unreasonable, the Board has no power to make a retroactive amendment of the tariff. The application, therefore, fails.

OTTAWA, December 17, 1931.

Commissioner Norris concurred.

Application of the Township of Etobicoke for an Order authorizing the construction of a subway under the tracks of the Canadian National and Canadian Pacific Railways where the same cross Dundas Street, Township of Etobicoke; and for the distribution of cost of said subway.

File 9437.105.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The application of the Township of Etobicoke is joined in by the Toronto and York Roads Commission. The crossing is protected at present by wigwags. Dundas street is a road owned and controlled by the Toronto and York Roads Commission. The street is crossed not only by the double track of the Canadian Pacific Railway but also by a single track which, up to the present year, has been operated by the Canadian National Railways as an electric line. Since the present application was launched, the Canadian National has abandoned the operation of the line and has surrendered the property to the bondholders.

The cost of the subway at the point in question is estimated at \$300,000. The land damages are estimated at \$50,000 additional. It is suggested that the Toronto and York Roads Commission pay 30 per cent of the cost; the Grade Crossing Fund 40 per cent; and the balance, amounting to 30 per cent, to be borne by the township and the railway.

The Grade Crossing Fund is not in a position to make a contribution in aid of the work, and it is represented by the railway that it is not in a position to make contribution at present. The contributions suggested are based upon approximately 40 per cent being payable from the Grade Separation Fund. Counsel for the Toronto and York Roads Commission said he did not think that commission would feel that it should join in the work if it had to contribute over 30 per cent of the whole cost.

In 1929 the question of protection at this crossing was before the Board, on the complaint of motorists, as being inadequate.

In 1930, an additional wigwag was installed at the crossing, and the wigwags were joined up, a new one being put south of the electric line, and the old one moved to the north of the steam line. Both these were coupled with the two lines of railway so that they were actuated by movements on either of them. The installation in question was put into service in July, 1930.

Mr. Walter Gow, K.C., appeared for the bondholders of the electric line, the Guelph Radial. He stated that the position of this line was that there was at present a default on the bond interest. The Canadian National Electric

Railway had abandoned the operation of the line, and a receiver was appointed on behalf of the bondholders, with a writ claiming realization of the mortgaged assets. Mr. Gow was not in a position to state what future action, if any, would be taken with regard to the operation of the electric line; and he desired that the matter be noted on the record and kept open so that whatever order is made there might be enough on the record to enable a subsequent application to be made if necessary in the event of the railway subsequently resuming operations.

The Canadian Pacific Railway submits that the present installation has been in effect a little over a year; that there have been no accidents, and that under present conditions there is absolutely no justification, as far as the railway is concerned, for the expenditure proposed. It is further submitted that if the highway authorities wish to improve the facilities for traffic on Dundas street, that is their affair; but the railway strongly urges that it should not be involved in any further expenditure at this crossing at the present time.

The Canadian Pacific Railway draws attention to the large expenditures on protection which it has made in Toronto and vicinity. It sets out that since 1924 it has expended about \$30,000,000 in grade separation work on the water-front and on the viaduct, this being apart from the Union Station. The expenditure on the viaduct is the expenditure of both railways. In addition, in the case of the larger grade separation works in which the Canadian Pacific Railway is interested, and apart from the expenditures on crossings which affect solely the Canadian National Railways, the Canadian Pacific Railway has spent approximately \$3,000,000, including the Northwest Grade Separation and Lansdowne avenue, and there is under construction at the moment the St. Clair avenue subway which involves an expenditure of over \$500,000.

The Board, in my opinion, would not be justified in directing at the present time the work that is asked for.

OTTAWA, December 18, 1931.

Commissioner Norris concurred.

ORDER No. 47763

In the matter of the application of the Vancouver, Victoria and Eastern Railway and Navigation Company, hereinafter called the "Applicant Company," under the provisions of General Order No. 119, for leave to remove the agent at Bridesville Station, in the Province of British Columbia.

File No. 4205.559

TUESDAY, the 1st day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of the residents of Bridesville; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, until further order, to remove its agent at Bridesville Station, in the province of British Columbia, subject to and upon the condition that a caretaker be appointed to see that the station building is kept clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to take care of L.C.L. freight and express shipments.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47811

In the matter of the application of G. C. Ransom, on behalf of the Railway Companies, for permission to cancel the tariffs published in conformity with Order of the Board No. 41016, dated June 30, 1928.

Case No. 910

WEDNESDAY, the 9th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the mill at Port Stanley, Ont., has been destroyed, and there are no prospects of its immediately being rebuilt, and as a result no traffic is being moved under the provisions of tariffs published in conformity with Order No. 41016, dated June 30, 1928,—

The Board orders: That the railway companies be, and they are hereby, permitted to publish and file upon thirty days' notice, cancellation supplements to the said tariffs.

And the Board further orders that Order No. 41016, dated June 30, 1928, be, and it is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47824

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 9th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 95-A and 573-A of Supplement No. 42 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of tolls published in the said items 95-A and 573-A of Supplement No. 42 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

For Item 95-A—

The 5th class rates in effect prior to July 1, 1927.

For Item 573-A—

From St. John, N.B. to	Rates in cents per 100 pounds	
	In crates or boxes	In bundles
Belleville, Ont.	102	165½
Brantford, Ont.	112	192½
Brockville, Ont.	98	169½
Chatham, Ont.	133½	213
Cobalt, Ont.	167	263
Cochrane, Ont.	185	290
Cornwall, Ont.	98	159½
Edmundston, N.B.	85	140

For Item 573-A—

From St. John, N.B., to	Rates in cents per 100 pounds	
	In crates or boxes	In bundles
Fredericton, N.B..	75½	126
Hamilton, Ont..	113	182
Iroquois Falls, Ont..	185	290
Kingston, Ont..	102	165½
Kitchener, Ont..	112	192½
Lindsay, Ont..	108½	175½
London, Ont..	127	203
Midland, Ont..	112	192½
Montreal, Que..	95	155
New Liskeard, Ont..	170	277½
Niagara Falls, Ont..	116	186½
North Bay, Ont..	116	186½
Ottawa, Ont..	98	159½
Pembroke, Ont..	98	159½
Peterboro, Ont..	105½	170
Quebec, Que..	91	149
Renfrew, Ont..	98	159½
St. Catharines, Ont..	116	186½
Sault Ste. Marie, Ont..	141	224
Sherbrooke, Que..	95	155
Sudbury, Ont..	127	203
Timmins, Ont..	185	290
Toronto, Ont..	108½	175½
Trenton, Ont..	102	165½
Victoria Park, Ont..	116	186½
Woodstock, Ont..	123	197

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47798

In the matter of the complaints of the Yaqui Fruit Company, and the Mexico Arizona Trading Company, of Los Angeles, California, regarding increases in class rates from Rouses Point, New York, to Montreal, Quebec, as published to be effective December 11, 1931, in Central Vermont Railway, Incorporated, Tariff G.F.D.-1086, C.R.C. 2233.

File No. 26868.26

THURSDAY, the 10th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what has been filed in support of the complaints; the requested submission of the railway company concerning the increases not being filed,—

The Board orders: That that portion of Note 10, page 18, of Central Vermont Railway, Incorporated, Tariff G.F.D.-1086, C.R.C. No. 2233, providing, effective December 11, 1931, for increases in class rates from Rouses Point, New York, to Montreal, Quebec, be, and it is hereby, suspended, until further order of the Board.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47820

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.10

THURSDAY, the 10th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 3 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 3 to Tariff C.R.C. No. 3, approved herein, is $3\frac{1}{2}$ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47821

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 10th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 683, filed by the Temiscouta Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. 683, approved herein, is 4 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47822

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 10th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 66 of Supplement No. 41 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 66 of Supplement No. 41 to Tariff C.R.C. No. 817, approved herein, is $7\frac{1}{2}$ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47823

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 10th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 4 of Supplement No. 11 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of those published in the said item 4 of Supplement No. 11 to Tariff C.R.C. No. 851, approved herein, are the fifth class rates in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47815

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic portion of its Prince Albert-Lac la Biche Branch (Debden to Meadow Lake), from mileage 0·0 to 94·3.

File No. 37279.28

FRIDAY, the 11th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic portion of its Prince Albert-Lac la Biche Branch (Debden to Meadow Lake), from mileage 0·0 to 94·3.

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47826

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for approval of Supplement No. 2 to Algoma Eastern Railway Standard Tariff C.R.C. No. 320, on file with the Board under file No. 20693.3.

SATURDAY, the 12th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That Supplement No. 2 to Algoma Eastern Railway Standard Tariff C.R.C. No. 320, made necessary by reason of the fact that the applicant company has now absorbed the Algoma Eastern Railway Company, on file with the Board under file No. 20693.3, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47836

In the matter of the Order of the Board No. 47811, dated December 9, 1931.

Case No. 910

TUESDAY, the 15th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Order No. 47811, dated December 9, 1931, be, and it is hereby, amended by striking out the word "mill" in the first line of the recital of the order and substituting therefor the word "elevator."

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47850

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order of the Board No. 47229, dated August 15, 1930.

File No. 34822.13

WEDNESDAY, the 16th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in certifying the normal tolls in connection with item 299-A of Supplement No. 15 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company,—

It is ordered: That the last paragraph of the said Order No. 47229, dated August 15, 1930, be struck out and that in lieu thereof the following be substituted:—

“ For Item 299-A

“ On fresh vegetables shown in item 40, page 270 of Canadian Freight Classification No. 18 to Halifax, Nova Scotia—

“ In barrels with cloth tops, or in baskets with solid or slatted wooden tops—The difference between the second class rates published in Dominion Atlantic Railway Tariffs C.R.C. Nos. 791 and 690, added to the fourth class rates published in Tariff C.R.C. No. 791.

“ In bags, barrels, boxes, or crates—The difference between the third class rates published in Dominion Atlantic Railway tariffs, C.R.C. Nos. 791 and 690 added to the fourth class rates published in Tariff C.R.C. No. 791.

“ On fresh vegetables shown in items 42, 44 and 45, page 270, and items 4, 5, and 6, page 271, of Canadian Freight Classification No. 18, the difference between the first class rates published in Dominion Atlantic Railway Tariffs C.R.C. Nos. 791 and 690, added to the fourth class rates published in Tariff C.R.C. No. 791.”

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47859

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 17th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board Orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, as follows, namely:—

Supplement 4 to Tariff C.R.C. No. E-1689.
Supplement 6 to Tariff C.R.C. No. E-1229.
Supplement 12 to Tariff C.R.C. No. E-1504.
Supplement 16 to Tariff C.R.C. No. E-1253.
Supplement 17 to Tariff C.R.C. No. E-1239.
Supplement 18 to Tariff C.R.C. No. E-1239.
Supplement 27 to Tariff C.R.C. No. E-1230.
Supplement 31 to Tariff C.R.C. No. E-1234.
Supplement 50 to Tariff C.R.C. No. E-1235.

subject to the provisions of subsection 2 of section 3 of the said Act.

(Sgd.) C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47860

In the matter of the complaints of the Yaqui Fruit Company and the Mexico Arizona Trading Company, of Los Angeles, California, regarding increases in class rates from Rouses Point, New York, to Montreal, Quebec, as published to be effective December 11, 1931, in Central Vermont Railway, Incorporated Tariff, G.F.D.-1086, C.R.C. 2233;

And in the matter of Order No. 47798, dated December 10, 1931, suspending the increases in said class rates until further Order of the Board.

File No. 26868.26

THURSDAY, the 17th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon consideration of the submission of the railway company and the further submission of the Mexico Arizona Trading Company, Los Angeles,—

The Board orders: That the said Order No. 47798, dated December 10, 1931, be, and it is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47870

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 18th day of December, A.D. 1931.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

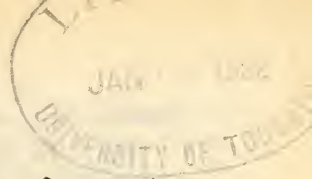
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. E-4542, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. E-4542, approved herein, is \$3.30 per net ton.

C. P. FULLERTON,
Chief Commissioner.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

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No. 23

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In the matter of the application of Mr. T. E. Greenwood, Douglas, Man., for a rehearing of the matter of the closing of the farm crossing over the Canadian Pacific Railway east of Douglas Station, Man., mile 121.8, Carberry Subdivision;

—and—

In the matter of Order No. 45111, dated June 28, 1930.

(File No. 30762.115)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

On October 2, 1929, an accident took place on the line of the Canadian Pacific Railway at the farm crossing situate a few yards east of Douglas Station, mile 121.8, Carberry Subdivision, in the province of Manitoba.

In his report on the accident, the Board's Inspector recommended that the question of the closing of this farm crossing be considered by the Board.

The railway company was quite agreeable to its being closed.

The village of Douglas is in the rural municipality of Elton, and about fifty residents of that municipality opposed the closing of this crossing which, although a farm crossing, had been for many years used as a public crossing, the gates being seldom, if ever, closed.

There is a public crossing 1,100 feet east of the farm crossing.

The matter came on for hearing at Brandon on March 13, 1930. After hearing the evidence, the Board took the view that the farm crossing should be made a public crossing and the public crossing a farm crossing, and the Deputy Chief Commissioner Vien, who presided at the hearing, suggested to the reeve of the municipality that the council should file an application with the Board asking that the farm crossing be made a public crossing.

Acting on this suggestion, the municipality on April 10, 1930, passed the following resolution:—

“In the event of any change being made with the railway crossing in the village of Douglas, the council of the rural municipality of Elton do hereby make application to the Board of Railway Commissioners for Canada to make the present crossing into a public one.”

Subsequently, on June 28, 1930, the Board ordered

"that the Canadian Pacific Railway Company be, and it is hereby, directed, at its own expense, to construct and maintain a public crossing over its railway east of Douglas Station, in the province of Manitoba, mileage 121.8, Carberry Subdivision; the existing public crossing at the east end of Douglas Station yards to be closed as such and converted into a farm crossing, in accordance with the Standard Regulations of the Board Regarding Farm Crossings; the new public crossing to be constructed in accordance with 'The Standard Regulations of the Board Affecting Highway Crossings'."

Shortly after said order was made, Mr. T. E. Greenwood, who resides immediately south of the public crossing in question, applied to the Board for a rehearing, complaining that the conversion of this public crossing into a farm crossing seriously inconvenienced himself and other residents of the village.

The rehearing took place at Brandon on November 3, 1931, and judgment was reserved on the point of the jurisdiction of this Board to convert a public crossing into a farm crossing under the circumstances established in evidence.

From an examination of the notes of evidence taken at the previous hearing, it is apparent that no application on the part of the municipality was ever made in connection with this public crossing. During the course of this hearing, Mr. Boles, reeve of the municipality, was called and in the course of his evidence the following colloquy took place between him and Deputy Chief Commissioner Vien:—

"The DEPUTY CHIEF: Would you be willing, if we did convert this into a public crossing, to close the other crossing?"

"Mr. BOLES: We couldn't do that.

"Q. Why?—A. It is a section line. We could not do that, could we?"

"Q. You could not very well, without an application to the Master of Titles?—A. Yes, well, that is what I have said; we could not close that, because it is on the section survey.

"Q. Is it being used freely and largely?—A. Not as much as the one at the other point, but still it is freely used.

"Q. Will it be necessary?—A. Oh yes, it would be necessary. It would not do to close that.

"Q. Suppose we did allow the railway company to fence that out? A. I don't think it would be wise to close it."

I can find nothing in the Act that authorizes this Board of its own motion, and without any application from the municipality having jurisdiction over public roads, to direct either the closing of a public crossing, or its conversion into a farm crossing. I can find no case in the Reports where the Board in a matter where no diversion of a road was involved, ordered a public crossing to be converted into a farm crossing.

In re Closing Highways at Railway Crossings, 15 C.R.C. 305, Sir Henry Drayton, C.C., made the following ruling:—

"Many applications are made by railway companies to have highways closed. Some orders have in the past issued closing highways in so many words, and these orders are referred to by the railway companies in support of their requests for similar orders. In no instance, however, that I have been able to discover has any street been closed except where some highways forming part of a general scheme of rearrangement have been diverted. Applications for orders closing highways come in in varying forms, and it has become necessary to rule on the Board's jurisdiction in connection with the matter.

"The Board has no jurisdiction to close highways. The Board has the right to divert. Diversion implies two things: firstly, laying out of a new right of way for the public, that is, a highway across the railway company's right of way; secondly, closing of the previous highway. The Board's jurisdiction, so far as closing is concerned, is confined entirely to the extinguishment of the public right to cross the railway company's right of way. It can go no further."

In the case of *City of Oshawa v. Canadian National Railways*, 37 C.R.C. 318, McLean, A.C.C., in his judgment at p. 323 said:—

"The Board has no power to close highways. It has, however, power to close and divert. *In re Closing of Highways at Railway Crossings*, 15 C.R.C. 305, Ruling of Chief Commissioner Drayton."

If the Board has no power to close highway crossings, it clearly can have no power to convert a highway crossing into a farm crossing.

While the present application for a rehearing has only reference to the public crossing, I think it would be better to set aside the previous order in its entirety. To merely set aside that part of it which relates to the public crossing would have the effect of leaving two public crossings within 1,100 feet of each other, and both within the railway yards. The result is, that the situation remains as it was before the original order was made.

December 16, 1931.

COMMISSIONER STONEMAN:

I was one of the Commissioners who sat at Brandon on Tuesday, March 13, 1930, and heard the evidence in consideration of the matter of closing the private crossing east of Douglas, Man., mile 121·8, Carberry Subdivision, Canadian Pacific Railway.

On the facts presented in evidence, I felt certain the convenience of the public would be better served by the farm crossing being made a public crossing and the existing public crossing at the east end of Douglas Station yards being closed and converted into a farm crossing.

I also sat when the matter was reheard at Brandon on November 3, 1931, and in so far as the evidence presented at the rehearing of the matter is concerned, I am still of the opinion that the new status given to these crossings, under Order No. 45111 of June 28, 1930, would be in the best interests of the public.

In reading the Judgment of the Chief Commissioner of December 16, 1931, however, I agree that the Board in issuing Order No. 45111, thereby closing a public crossing as such, exceeded its authority, and I concur in the Judgment and agree with the finding that Order No. 45111 be set aside in its entirety, and thereby permit the crossings to revert to their former status.

OTTAWA, December 17, 1931.

ORDER No. 47864

In the matter of the application of T. E. Greenwood, of Douglas, Manitoba, for a rehearing of the matter of the closing of the private crossing over the Canadian Pacific Railway east of Douglas Station, mileage 121.8, Carberry Subdivision;

And in the matter of the Order of the Board No. 45111, dated June 28, 1930.

File No. 30762.115

FRIDAY, the 18th day of December, A.D. 1931.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Brandon, November 3, 1931, in the presence of counsel for the Canadian Pacific Railway Company, T. E. Greenwood appearing in person, and what was alleged,—

The Board orders: That the said Order No. 45111, dated June 28, 1930, be, and it is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47894

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariffs C.R.C. Nos. 7 and 8, on file with the Board under file No. 35943.5.

TUESDAY, the 22nd day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' tariffs C.R.C. Nos. 7 and 8, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and they are hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47896

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 22nd day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement 43 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement 43 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

For Item 242-A
to

Rates in cents
per 100 pounds

Brantford, Ont.	41½
Goderich, Ont.	45½
Hamilton, Ont.	40
London, Ont.	45½
Montreal, Que.	34½
Niagara Falls, Ont.	40
Orillia, Ont.	40
Ottawa, Ont.	36½
Quebec, Que.	34½
St. Catharines, Ont.	40
St. Johns, Que.	34½
Stratford, Ont.	43
Toronto, Ont.	37½
Welland, Ont.	40
Windsor, Ont.	47
Woodstock, Ont.	43

For Item 534
to

Brampton, Ont.	47½
Brantford, Ont.	50
Cornwall, Ont.	41½
Goderich, Ont.	54½
Guelph, Ont.	49
Hamilton, Ont.	49
Kingston, Ont.	43
Kitchener, Ont.	50½
London, Ont.	53
Magog, Que.	40
Montreal, Que.	40
Peterborough, Ont.	44½
Quebec, Que.	37½
St. Hyacinthe, Que.	40
Toronto, Ont.	47
Valleyfield, Que.	41½
Waterloo, Que.	40

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 47909

In the matter of the complaint of the Department of Public Works of the Province of New Brunswick against alleged excessive freight charges imposed by the Canadian National Railways on certain carload shipments of gravel shipped from Portage, Prince Edward Island, to Rexton and Richibucto, New Brunswick.

File No. 19475.112

THURSDAY, the 24th day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Moncton, December 1, 1931, in the presence of counsel for and representatives of the Department of Public Works of the province of New Brunswick and the Canadian National Railways, and what was alleged,—

The Board orders: That the complaint be, and it is hereby, dismissed.

F. A. LABELLE,
Deputy Chief Commissioner.

ORDER No. 47913

In the matter of the application of the Township of Etobicoke, hereinafter called the "Applicant," for an Order authorizing the construction of a subway under the tracks of the Canadian National and Canadian Pacific Railways at Dundas Street, in the Township of Etobicoke, and for the distribution of the cost of the subway.

File No. 9437.105

MONDAY, the 28th day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, November 24 and 25, 1931, in the presence of counsel for and representatives of the applicant, the Toronto and York Roads Commission, the Canadian Pacific Railway Company, and bondholders of the Guelph Radial, and what was alleged,—

The Board orders: That the application be, and it is hereby, dismissed.

F. A. LABELLE,
Deputy Chief Commissioner.

ORDER No. 47917

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of
The Maritime Freight Rates Act.*

File No. 34822.13.

TUESDAY, the 29th day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the tolls published in item 6 of Supplement No. 23 to tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under Section 9 of The Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of Subsection 2 of Section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 6 of Supplement No. 23 to tariff C.R.C. No. 856, approved herein, are as follows:

From	Rates in cents per 100 pounds
Windsor, N.S.	12½
Kingsport, N.S.	12½
Somerset, N.S.	12½

S. J. McLEAN.

Assistant Chief Commissioner.

ORDER No. 47918

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of
The Maritime Freight Rates Act.*

File No. 34822.13.

TUESDAY, the 29th day of December, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the toll published from Falmouth, Nova Scotia, to Windsor Junction, Nova Scotia, in item 45-A of Supplement No. 42 to tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under Section 9 of The Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of Subsection 2 of Section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 45-A of Supplement No. 42 to tariff C.R.C. No. 817, approved herein, is 5 cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 47926

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

TUESDAY, the 5th day of January, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in item 140 of Supplement No. 42, and item 141 of Supplement No. 43, to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 140 of Supplement No. 42 and item 141 of Supplement No. 43 to Tariff C.R.C. No. 817, approved herein, is $13\frac{1}{2}$ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47927

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

TUESDAY, the 5th day of January, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in item 3-A of Supplement No. 14 to Tariff C.R.C. No. 815, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 3-A of Supplement No. 14 to Tariff C.R.C. No. 815, approved herein, are as follows:—

Miles	Rates in cents per 100 lbs.
Not over 10.. . . .	6 $\frac{1}{2}$
Over 10 and not over 20.. . . .	7
Over 20 and not over 30.. . . .	7 $\frac{1}{2}$
Over 30 and not over 40.. . . .	8
Over 40 and not over 50.. . . .	9 $\frac{1}{2}$
Over 50 and not over 60.. . . .	11 $\frac{1}{2}$
Over 60 and not over 70.. . . .	12
Over 70 and not over 80.. . . .	13
Over 80 and not over 90.. . . .	14
Over 90 and not over 100.. . . .	15
Over 100 and not over 125.. . . .	15 $\frac{1}{2}$
Over 125 and not over 150.. . . .	17
Over 150 and not over 175.. . . .	18

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF OCTOBER, 1931

Railway accidents.. . . . 194, involving 21 persons killed and 273 injured
 Railway accidents at highway crossings.. 38, involving 8 persons killed and 44 injured

	Killed	Injured
Passengers.. . . .	2	101
Employee.. . . .	3	142
Others.. . . .	24	74
	<hr/> 29	<hr/> 317

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

NOVA SCOTIA

No. of
Accidents

- 2 Automobile—Auto ran into side of train. N.S. licences C-18206, 60-967.
- 1 Auto Truck—Stalled on crossing. N.S. licence C-18097.
- 1 Horse Drawn Vehicle.

NEW BRUNSWICK

- 1 Automobile—N.B. licence T-7119.

QUEBEC

- 1 Automobile—Auto ran into side of stock car. Que. licence F-7219.
- 3 Automobile—Auto driver failed to stop for crossing. Que. licences, 77969; 109458; F-16093.
- 1 Horse Drawn Vehicle—Driver deaf.
- 1 Pedestrian—Crawled under gates in lowered position.

ONTARIO

- 8 Automobile—Ran into side of train. Ontario licences, AN-578; LD-541; NK-403; MZ-23; C-1891; JX-837; OP-748; GR-14.
- 1 Automobile—Auto struck track motor. Ontario licence BX-404.
- 8 Automobile—Ontario licences, L-631; OS-878; LB-531; S-1818; 29-083-C; J-2032; JP-541; Penna. LZ-17.

MANITOBA

- 1 Automobile—Man. licence 110-305.

SASKATCHEWAN

- 1 Automobile—Auto ran into side of train. Sask. licence 20404.
- 1 Automobile—Stalled on crossing. Sask. licence 5-560.
- 1 Horse Drawn Vehicle.
- 1 Pedestrian.

ALBERTA

- 3 Automobile—Alta. licences 70769; 23142; BT-3785.

BRITISH COLUMBIA

- 1 Automobile—Ran into side of train. B.C. licence 26170.
- 1 Automobile—Driver's view obstructed by man standing on running board. B.C. licence 63-903.

Of the 38 accidents at highway crossings, 2 occurred at Protected crossings and 36 at Unprotected crossings. Twenty-two of the accidents occurred during the daylight hours and 16 at night.

OTTAWA, January 7, 1932.

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Application of the City of Toronto for a rehearing on the question of jurisdiction in the matter of the application of the Corporation of the Village of Forest Hill for an Order under Sections 256 and/or 264 of the Railway Act, directing the Canadian National Railway Company to reconstruct the existing bridge whereby the roadway of Eglinton Avenue is carried over the Company's Railway in the said Village of Forest Hill, in the County of York and Province of Ontario, so as to afford sufficient and adequate facilities for all traffic passing over the said bridge.

(File No. 37756)

JUDGMENT

CHIEF COMMISSIONER FULLERTON:

Upon the application of the Corporation of the Village of Forest Hill, an order was made on the 25th day of September, 1931, authorizing the reconstruction of an overhead railway bridge at Eglinton avenue, at the corner of Spadina road, in accordance with plans on file with the Board. The order contained the following provision:—

"That the Canadian National Railways pay \$20,000 towards the cost of constructing the said bridge, and be relieved of any further payments; the remainder of the cost, including maintenance but not including paving, nor the Spadina road section, to be paid by the applicant, the city of Toronto, and the township of York, but the consideration of their respective contributions to be reserved until after the completion of the bridge and the paving on Eglinton avenue; the cost of paving the bridge as well as the cost of the Spadina road section thereof, after deducting the proportion of the railway company's contribution applicable to the said Spadina road section, to be borne and paid by the applicant."

While the point was not raised at the hearing, after the above order was made the city of Toronto, taking the ground that the Board had no jurisdiction to make the order so far as it affects the city of Toronto, applied for a rehearing on this point, which was granted.

The matter came on before the Board on December 17, 1931. The undisputed facts which were developed at the hearing, leading to the making of the order, may be briefly stated as follows:—

Eglinton avenue is a main east and west highway running through the township of York, the village of Forest Hill and the city of Toronto, and was in existence long before the construction of the Belt Line railway hereinafter

referred to. The bridge in question here, which is in the village of Forest Hill, was originally constructed by the Belt Line railway about the year 1890. This line ran around the city of Toronto and for a considerable distance followed the natural contour of the ground in a ravine. It was taken over by the Grand Trunk Railway Company in or about the year 1892 and, subsequently, by the Canadian National Railways in or about the year 1923.

At the point on Eglinton avenue where the bridge was built, the railway runs through a ravine. Before the railway was built the highway crossed the ravine by means of a fill the top of which was about eight feet below the level of Eglinton avenue. When the railway was built, it was thought necessary to have a 19·6 ft. clearance, so the railway was placed four or five feet below the level of the old highway where it crossed the ravine, and the bridge carrying the highway was elevated above the old street level.

The application and plans were made and the bridge built by the railway itself.

Recently Eglinton avenue has been paved to a width of 54 feet, the township of York, the village of Forest Hill and the city of Toronto doing the work within their respective jurisdictions. The roadway across the old bridge is 24·4 feet wide, and the application for a new bridge with a roadway of 54 feet in width was made to afford adequate facilities for the traffic passing along Eglinton avenue and across the bridge.

Mr. Geary, K.C., who appeared as counsel for the city of Toronto at the rehearing, took the ground that the work of reconstructing the bridge was a matter merely of street improvement and was not necessitated by any consideration of "protection, safety and convenience of the public" within the meaning of section 257 of the Railway Act. He relies on the case of the British Columbia Electric Railway Company v. Vancouver, Victoria and Eastern Railway and Navigation Company *et al*, 1914 A.C. 1067, decided in June, 1914. This is a decision of the Judicial Committee of the Privy Council and, if I may say so with respect, may be described as an unique decision among railway cases. It is unlikely that a similar case will ever arise again, and it is even possible that some day counsel will tire of trying to use it as a precedent. Both the Supreme Court of Canada and the Judicial Committee have ever since been engaged in attempts to distinguish or explain it. It was an appeal by the British Columbia Electric Railway Company from the decision of the Supreme Court of Canada, which upheld an order of the Board of Railway Commissioners. This order was made on the application of the city of Vancouver, and authorized the city to carry four streets which were crossed by the railway company's line on the level, over that line by means of overhead bridges. The order directed the British Columbia Electric Railway Company to pay a portion of the cost in connection with the carrying of the two streets along which their tramways ran over the line.

The judgment of the Judicial Committee was delivered by Lord Moulton and was based very largely on a statement made by Alderman Baxter to the Board of Railway Commissioners at the hearing before them. This statement was as follows:—

"It was a question he said, whether on the one hand the grade was to be elevated, or on the other, the grade was to be made to conform to the grade of the railway tracks and level crossings established. It was necessary to have the matter disposed of because people were applying for permits to build upon these streets, and these could not be granted owing to the inability of the municipality to give the grade of the streets. The council preferred the former of the two alternative courses because they recognized that the street grades were too low and must inevitably be raised."

After quoting the above statement of Alderman Baxter, Lord Moulton proceeds at p. 1074 as follows:—

"It follows, therefore, that the application was a matter between the corporation and the railway company alone. If the Board possessed any such jurisdiction to make the order, it must be derived from the provisions of the statutes which created it and gave to it its powers. Their Lordships can find nothing in those statutes which empowers the Railway Board to make any such order against the tramway company. The only portion of the tramway lines which was subject to the jurisdiction of the Railway Board was the actual crossings, and those only so far as concern sections 227 and 229 (now 252 and 254) of the Railway Act, and these sections have nothing whatever to do with such matters as these street improvements."

Later on in his judgment, he says:—

"The fundamental error underlying the decision of the Railway Board is that they have considered that the fact that the tramway company would be benefited by the works gave them jurisdiction to make them pay the cost or a portion of it. There is nothing in the Railway Act which gives any such jurisdiction."

No reference whatever was made in the judgment to section 238 (now 257) of the Railway Act.

It may well be that on the strength of the statement of Mr. Baxter on behalf of the city of Vancouver, coupled with the entire lack of evidence of any danger existing at the level crossings which were eliminated, the Judicial Committee came to the conclusion that section 238 had no application.

In the case of the *Toronto Railway Company v. the Corporation of the City of Toronto et al*, decided by the Supreme Court of Canada in 1916, the point of the work being merely a matter of street improvement within the meaning of the *British Columbia Electric Railway Case* was raised. This case is reported in 53 S.C.R. 222.

The facts there were, that on a report of its Chief Engineer that the crossing by the Canadian Pacific Railway of the tracks of the Toronto Railway Company at rail level, at Avenue road, in the city of Toronto, was dangerous, the Board ordered that the street be carried under the Canadian Pacific Railway Company's tracks, and that the Toronto Railway Company pay ten per cent of the cost. The Supreme Court dismissed the appeal, holding that it was fundamentally clear that the order was made for the protection of the public within the meaning of section 238 of the Railway Act.

In his judgment at p. 225 the Chief Justice, referring to the *British Columbia Electric Railway Case*, says:—

"Indeed I apprehend that but for that case the present case would hardly have been brought."

He then proceeds to distinguish the two cases.

Idington, J., in his judgment deals very fully with the *British Columbia Electric Railway Case*, and at p. 238 after referring to the case of the city of Toronto v. the Canadian Pacific Railway Company (1908 A.C. 54) he proceeds as follows:—

"Yet, on the other hand, years after the decision above referred to and when section 238 of the Act had been amended and other legislation passed dealing with the very grave question of grade crossings and seeking through the Board to eliminate them in part at least, we have the decision of the court above in the case of the *British Columbia Electric Railway Company v. Vancouver, etc. Railway Company*, reversing an order of the Board maintained by this court, approving of a plan for

separating grades as in the order here in question, and directing the appellant (there in question) to contribute to the expense of executing that plan of separation.

"The difference between the scheme propounded in that plan and the one involved herein is that the municipal corporation plan there was to carry its highway, and therewith the British Columbia Electric Railway over the steam railway by a bridge instead of as here in question providing for the crossing by the raising of the Canadian Pacific Railway track and the highway going under in a subway wherein the appellant might lay a new track and thus attain identically the same object which was to separate the grades and thus ensure the safety of the public.

"One other difference was that the application there was made to the Board by the municipal corporation and here the proceeding is one initiated by the Board.

"I am puzzled to know how that creates any substantial difference for section 238 as amended expressly provided for 'any municipal or other corporation' moving in the matter. Nor can I see that because that municipal corporation incidentally desired something to proceed in way of settling its street grades contemporaneously with executing a most desirable purpose of eliminating one or more grade crossings, their application should be held null.

"It is quite clear that the Board imagined they were acting within the legislation promoting the abolition of grade crossings, for by the order made in that case it provided for three grants of \$5,000 each being paid out of the Railway Grade Crossing Fund, created by Parliament for the express purpose of eliminating progressively the grade crossings."

The decision in this case was approved by the Judicial Committee in the case next to be referred to.

In 1919 the Toronto Railway Company by special leave appealed direct to the Judicial Committee of the Privy Council from the order of the Board of Railway Commissioners authorizing the Corporation of the City of Toronto to carry Queen street East, Toronto, with the tracks of the Toronto Railway, over the tracks of three Dominion railways and directing the Toronto Railway Company to pay a portion of the cost of construction (the *Toronto Railway Company v. the Corporation of the City of Toronto*, 1920 A.C. 426).

The appellant relied upon the authority of the British Columbia Electric Railway Case and again the Privy Council distinguished it.

In 1930 the Toronto Transportation Commission, which had succeeded the Toronto Railway Company, went to the Privy Council on the same question of jurisdiction. The case will be found reported in 1930 A.C. 686. The old question of the order involving a merely "street improvement" was again raised and decided against the appellant.

The decision, however, of the Privy Council which appears to be indistinguishable in its facts from the case now under consideration is *Toronto Transportation Commission v. Canadian National Railways*, reported in 1930 A.C. p. 704. This case is known as the Main Street Bridge Case, and in it the Toronto Transportation Commission once more relied on the "street improvement" argument and again were defeated.

The material facts as stated at p. 704 are as follows:—

Prior to 1884 a public highway known as Dawes road, then situated in the township of York, crossed on the level the lines of the Grand Trunk Railway Company, now the Canadian National Railways. By an agreement of that year between the township and the railway company the portion of Dawes road crossed by the railway was closed and a new substituted highway, now called Main street, was carried over the railway by a bridge, which the railway company covenanted to build and keep in repair at its own expense. The district

in which the bridge was situated subsequently became urban in character and was annexed to the city of Toronto. In 1919 the corporation of the city applied to the Railway Board for an order on the railway company to reconstruct the bridge, and on July 3, 1920, the Railway Board ordered the railway company to do so at their own cost.

The former bridge is stated to have been physically solid and capable of carrying without the danger of a breakdown the traffic offered, but because of its dimensions to have been inadequate to accommodate the volume of the traffic.

Subsequently the order of the Board was amended so as to provide that a portion of the cost of reconstructing the bridge should be borne by the Transportation Commission. From this order the Transportation Commission appealed to the Supreme Court, which upheld the order, and the Judicial Committee of the Privy Council subsequently upheld the decision of the Supreme Court.

I am entirely unable to distinguish the facts in that case from the one now under consideration. In that case as in the present case, the question was the reconstruction of an old bridge by which a highway was carried over the railway, the old bridge in both cases being sufficiently solid and capable of carrying without the danger of a breakdown the traffic offered, but because of its dimensions inadequate to accommodate the volume of traffic. In the one case, the party seeking to escape liability was the Toronto Transportation Commission, which was carrying a service of street cars over the bridge. In the present case, it is a corporation adjoining the municipality in which the bridge is situated.

The report of the case in the Supreme Court of Canada will be found in 1930 S.C.R. 94.

Anglin, C. J., delivered the judgment of the majority of the court. There had been an application by the Transportation Commission under section 252 of the Railway Act for leave to cross with its street cars the line of railway by means of the new overhead bridge. In his judgment after quoting the several relevant sections of the Railway Act, he proceeds at p. 100 as follows:—

“Whether the order against which this appeal is taken be viewed as an exercise by the Board of the powers conferred by sections 257 and 259 upon an application for permission to cross under section 252 made by the appellants, or whether it should be viewed merely as a case in which the Board is ‘reviewing . . . and altering or varying’ (section 51) an order or decision already made by it in regard to the payment of the cost of the bridge in question, its jurisdiction to make the order now in appeal seems to us to be indubitable.”

Mignault, J., who dissented, did not consider that the work was for the protection, safety and convenience of the public within the meaning of section 257, which he held to be inapplicable to the case as being merely one of street improvement. His view is the view pressed upon us by Mr. Geary in the present case.

The judgment of the Judicial Committee affirming the judgment of the Supreme Court of Canada was delivered by Lord MacMillan who, after quoting from the opinions of both Anglin, C. J., and Mignault, J., in the Supreme Court, said at p. 709:—

“Now it is clear that section 39 is applicable to the work of reconstruction which the Board ordered on July 3, 1920.”

That section reads as follows:—

“39. (1) When the Board, in the exercise of any power vested in it, in and by any order directs or permits any structure, appliances, equipment, works, renewals, or repairs to be provided, constructed, reconstructed, altered, installed, operated, used or maintained, it may, except as otherwise expressly provided, order by what company, municipality or person, interested or affected by such order, as the case may be, and when or within what time and upon what terms and conditions as to the

payment of compensation or otherwise, and under what supervision, the same shall be provided, constructed, reconstructed, altered, installed, operated, used and maintained.

"(2) The Board may, except as otherwise expressly provided, order by whom, in what proportion, and when, the cost and expenses of providing, constructing, reconstructing, altering, installing and executing such structures, equipment, works, renewals, or repairs, or of the supervision, if any, or of the continued operation, use or maintenance thereof, or of otherwise complying with such order, shall be paid."

He then proceeds to consider the question whether the Transportation Commission was "interested or affected by" the order for the reconstruction of the bridge which he finds attended with difficulty owing to the fact that the Transportation Commission did not come into existence until after the order for the construction of the bridge had been made. He, however, held the Transportation Commission liable.

The question of whether the city of Toronto is "interested or affected by" the order in the present case does not arise here, as Mr. Geary admitted that, if the Board had jurisdiction, he could not in view of the decision of the Supreme Court in the County of Carleton v. City of Ottawa, 41 S.C.R. 552, argue that his clients were not "interested in or affected by" the order.

No reference appears to have been made in any of the cases referred to above to section 264 of the Railway Act, which reads as follows:—

"264. Every structure by which any railway is carried over or under any highway or by which any highway is carried over or under any railway, shall be so constructed, and, at all times, be so maintained, as to afford safe and adequate facilities for all traffic passing over, under or through such structure."

It appears to me that it may well be argued that the effect of this section combined with section 39 is to give the Board jurisdiction quite irrespective of section 257, or of the circumstances under which the bridge was constructed. However, it is unnecessary to decide this point.

The application will be dismissed.

OTTAWA, January 9, 1932.

Commissioners Norris and Stoneman concurred.

ORDER NO. 47941

In the matter of the application of the City of Toronto for a rehearing on the question of jurisdiction in the matter of the application of the Corporation of the Village of Forest Hill for an Order under sections 256 and/or 264 of the Railway Act, directing the Canadian National Railway Company to reconstruct the existing bridge whereby the roadway of Eglinton Avenue is carried over the Company's railway in the said Village of Forest Hill, in the County of York and Province of Ontario, so as to afford sufficient and adequate facilities for all traffic passing over the said bridge.

File No. 37756

FRIDAY, the 8th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, December 17, 1931, in the presence of counsel for the City of Toronto, the Canadian National Railways, and the Village of Forest Hill, and what was alleged,—

The Board Orders: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Complaint of James Richardson & Sons, Ltd., Montreal, Que., against the Canadian National Railways assessing switching charges at the rate of \$3.50 per car over and above the regular rate under its Tariff C.G. 93, on shipments of grain from Fort William and Port Arthur to Quebec, via Canadian National Rys.

Complaint of Canadian Co-Operative Wheat Producers, Ltd., Montreal, Que., against refusal of the Canadian National Railways to include switching and wharfage charges in the rates on grain, all rail, from Fort William to Quebec.

Application of the Harbour Commissioners of Quebec for a ruling of the Board on the matter of absorption of switching and wharfage charges by the Canadian National Railways in their rate of 18.34 cents per 100 pounds, on export grain, all rail, from Fort William to Quebec.

Application of the City of Quebec, Que., in the matter of switching and wharfage charges absorbed by the Canadian National Railways in their rate of 18.34 cents per 100 pounds on export grain, all rail, from Fort William to Quebec.

File 27983.7

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

General Order No. 448, of August 26, 1927, provided, *inter alia*, that—

“The rate of 34½ cents per 100 pounds on wheat and 33 cents per 100 pounds on other grain for export from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to Quebec, as shown in Supplement No. 32 to Canadian National Railway Tariff C.R.C. No. E-447 be, and they are hereby disallowed; and the Canadian National Railway Company is hereby directed to publish and file in substitution thereof a tariff showing a rate of 18.34 cents per 100 pounds on all grain for export from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to Quebec. Such changes to become effective on or before, but not later than, the twelfth day of September, 1927.”

The tariff providing for the rate of 34½ cents above referred to also included provision for (a) absorption of the wharfage rate at Quebec. This amounted to 6 cents per ton of 2,000 pounds, which is equivalent to 0.003 cents per 100 pounds; (b) absorption of the Harbour Commissioners' charge amounting to \$3.50 per car. This figure on 1,300 bushels of wheat would produce a rate of .0045 cents per 100 pounds. The switching services are performed by the Harbour Commissioners over their own tracks and by means of their own power.

The tariff filed making operative the rate of 18.34 cents per 100 pounds states that it does not provide for absorption of the wharfage rate or of the switching charge.

It is contended that this exclusion from the rate of 18.34 cents is in conflict with the provisions of the Board's General Order No. 448, as well as being contrary to the intention of same. So far as the scope of General Order No. 448 is concerned, there is nothing set out therein dealing with the question of absorption. The matter would appear to resolve itself into the question of what power the Board has in respect of ordering the absorption in question.

The matter was set down for hearing. In the meantime, a reference was made by the Board of Railway Commissioners for Canada to the Supreme Court of Canada in the matter of Vancouver wharfage charges, and the power of the Board to order the absorption of same.

For a period of years, the Canadian Pacific Railway Company and the Canadian National Railways had undertaken to absorb, in the case of import as well as export traffic, 50 per cent of the wharfage charges at Vancouver and Victoria, where such absorption did not exceed 50 cents per 2,000 pounds, such absorption being borne equally between the Trans-Pacific Steamship Lines and the railways. The absorption extended to traffic moving from points in Canada east of Edson and Canmore, Alberta, and Kootenay Landing, B.C. In 1925, the steamship companies took the position that they would no longer participate in the absorption, except on business originating at points east of the Manitoba-Saskatchewan boundary. The railways then proposed to amend their tariffs so that the absorption would apply only on traffic moving from points in Canada east of the Manitoba-Saskatchewan boundary.

On the complaint being made to the Board by certain shippers, an order issued suspending, pending hearing by the Board, the proposed amendments. Subsequently, an opportunity was allowed to be heard on the question of jurisdiction. The question submitted to the Supreme Court of Canada was:—

“Does the fact that the Board’s powers under section 358 of the Railway Act are limited as above set out, preclude the application of section 2 (32) of the Act in respect of wharfage charges on transpacific freight?”

Section 358 of the Railway Act reads as follows:—

“The provisions of this Act shall, in respect of tolls, tariffs and joint tariffs, so far as deemed applicable by the Board, extend and apply to the traffic carried by any railway company by sea or by inland water, between any ports or places in Canada, if the company owns, charters, uses, maintains or works, or is a party to any arrangement for using, maintaining or working vessels for carrying traffic by sea or by inland water between any such ports or places.”

In dealing with the question of wharfage charges, the Supreme Court of Canada stated that independently of section 358 of the Railway Act, the sections of the Act dealing with the powers of the Board had been carefully examined, and that the function of the Board as to tolls and charges was limited to regulating charges for carriage, and for those other services which are incidental to carriage as railway services within the meaning of the Act. It was held that the definition of “toll,” as contained in section 32, subsection 2, could not properly be construed as declaring that any wharfage service is a railway service as above summarized. *Reference by Board of Railway Commissioners of Canada re Vancouver Wharfage Charges, Canada Law Reports, 1931, p. 431.*

Following this, Board’s Order No. 46709, of May 21, 1931, issued reading as follows:—

“That the Supreme Court of Canada having decided that the function of the Board, under the Railway Act, as to tolls and charges, is limited to regulating charges for carriage and for those other services which are incidental to carriage as railway services within the meaning of the Act; and that the wharfage service in question is not a railway service in the above sense.”

The Board then ordered that Order No. 36108, which had suspended the proposed charge, be rescinded.

The decision of the Supreme Court above given is controlling in respect of wharfage in the present case, and the Board is without jurisdiction, as a matter of initial power, to direct the absorption of said charge in whole or in part.

Is there jurisdiction for the Board to order the absorption, in whole or in part, of the switching charges of the Quebec Harbour Commissioners for the

service performed by them? To make such an order, there must be jurisdiction bringing these switching charges within the scope of the powers possessed by the Board over the Canadian National Railways. The Canadian National Railways is a railway system operating under the Railway Act and subject to the jurisdiction of the Board.

"Toll" or "rate" under the Interpretation section of the Railway Act is in regard to a railway company and in respect of services performed by that company. The legislation under which the Quebec Harbour Commissioners operate makes clear that the Commission is not a railway company. By its Act of incorporation, which is chapter 34 of the Statutes of Canada, 1899, it is provided by section 22: —

"In this section, the expression 'harbour tracks' means railways and tramways within the boundaries of the harbour of Quebec; and harbour lines mean branch lines connecting harbour tracks with main lines of railway; but nothing in this section shall be deemed to constitute the corporation a railway company within the meaning of the Railway Act and its amendments."

The powers possessed by the Board over lines of railway subject to its jurisdiction are not extended, by inference, to lines which are specifically stated to be outside the Railway Act. It, therefore, follows that the Board, under the circumstances involved in the present case, cannot, as a matter of initial power, direct the absorption in whole or in part by the Canadian National Railways of the switching charges involved.

January 11, 1932.

Commissioners Norris and Stoneman concurred.

ORDER No. 47988

In the matter of the complaint of James Richardson & Sons, Limited, Montreal, Que., against the Canadian National Railways assessing switching charges at the rate of \$3.50 per car over and above the regular rate under its Tariff C.G. 93, on shipments of grain from Fort William and Port Arthur to Quebec, via Canadian National Railways;

The complaint of the Canadian Co-operative Wheat Producers, Limited, Montreal, Que., against the refusal of the Canadian National Railways to include switching and wharfage charges in the rates on grain, all rail, from Fort William to Quebec;

The application of the Harbour Commissioners of Quebec for a ruling of the Board on the matter of absorption of switching and wharfage charges by the Canadian National Railways in their rate of 18.34 cents per 100 pounds, on export grain, all rail, from Fort William to Quebec; and

The application of the City of Quebec, Quebec, in the matter of switching and wharfage charges absorbed by the Canadian National Railways in their rate of 18.34 cents per 100 pounds on export grain, all rail, from Fort William to Quebec.

File No. 27983.7

MONDAY, the 18th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, February 25, 1930, in the presence of counsel for and representatives of the Montreal Board of Trade, James Richardson & Sons, Limited, the Quebec Harbour

Commissioners, the Canadian Co-operative Wheat Producers, Limited, and the Canadian National Railways; and its appearing that, in the circumstances of this case, the Board is without jurisdiction to direct the Canadian National Railways to absorb the said switching and wharfage charges,—

It is ordered: That the complaints be, and they are hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 495

In the matter of the application of the Canadian Industries, Limited, Montreal, Quebec, for permission to use certain containers prescribed in the Interstate Commerce Commission regulations for the transportation of explosives and other dangerous articles.

File No. 1717.38.2

MONDAY, the 18th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That, effective February 15, 1932, metal barrels and drums complying with Container Specifications 5, 5A, 5B, 5C, 5D, 5E, 5F, 6A, 6B, 6C, 6D, 6E, 6F, 6G, and 6H, and wooden boxes complying with Specifications 15A, 15B, 15C, and 15D, as published in Agent B. W. Dunn's Tariff C.R.C. No. 2, on file with the Board under file No. 1717.38.3, but marked with markings in which the letters "CRC" are substituted for the letters "ICC" as shown in specifications, be, and they are hereby, authorized for use for shipping classes of freight permitted by the said Tariff to be shipped in such containers over railways in Canada subject to the jurisdiction of the Board.

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47936

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "Applicant Company," under Sections 251 and 276 of the Railway Act, for authority (1) to open for the carriage of traffic its line from mileage 9.13 to 10.1 from Welland, and (2) to operate over the subway at mileage 9.63 constructed under the Order of the Board No. 46940, dated June 30, 1931.

File No. 37640.2

THURSDAY, the 7th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an Engineer and the Chief Engineer of the Board, and the filing of the necessary affidavit,—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its line from mileage 9.13 to 10.1 from Welland, and to operate over the subway at mileage 9.63 from Welland.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47957

In the matter of the application of the McColl-Frontenac Oil Company, Limited, Montreal, Quebec, for suspension, pending hearing, of cancellation of commodity rates on petroleum and petroleum products from Halifax, Nova Scotia, as shown in Supplement No. 16 to Canadian National Railways tariff C.R.C. No. E-1253, to be effective January 14, 1932:

File No. 37970

WEDNESDAY, the 13th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon reading what has been filed in support of the application and the reply of the railway company,—

The Board orders: That that portion of Supplement No. 16 to Canadian National Railways Tariff C.R.C. No. E-1253, providing, effective January 14, 1932, for cancellation of commodity rates on petroleum and petroleum products, carloads, from Halifax, Nova Scotia, be, and it is hereby, suspended until further order of the Board.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47972

In the matter of the application of G. C. Ransom, Agent, for permission to file on less than statutory notice increased class rates from Eastern Canada to certain points in British Columbia.

File No. 27612

FRIDAY, the 15th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon its appearing that the competition of the Great Northern Railway from Duluth to certain points in British Columbia has now been removed, making it possible to publish increased rates from Lake Termini on the basis permitted in the Western Freight Rates Case, and that such increased rates are to become effective on January 26, 1932,—

The Board orders: That the class rates from Eastern Canada to the same points may be likewise increased and become effective on less than thirty days' notice but not earlier than January 26, 1932; such rates to be published in Supplement No. 77 to Tariff C.R.C. No. 107, which supplement shall give reference on title page to this permissive order.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 47990

In the matter of the application of the Canadian Electrical Association for an extension of the delay for applying for and for leave to appeal to the Supreme Court of Canada from General Order of the Board No. 490, dated February 20, 1931, amending the Rules for Wires Erected Along or Across Railways, adopted by General Order No. 231, dated May 6, 1918, as amended by General Order No. 291, dated April 7, 1920.

Case No. 4704

TUESDAY, the 19th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon the application of the Hydro-Electric Power Commission of Ontario made before the Board at Ottawa on the 19th day of January, A.D. 1932, in the

presence of counsel for the Canadian Electrical Association, Canadian National Railways, Canadian Pacific Railway Company, Michigan Central Railroad Company, and the Railway Association of Canada; and upon hearing what was alleged by counsel aforesaid and all parties consenting thereto,—

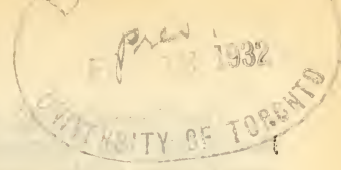
The Board orders:

1. That the order made by the Board on the 5th day of June, A.D. 1931, in the matter of the above application, be, and the same is hereby, amended *nunc pro tunc* by adding the said the Hydro-Electric Power Commission of Ontario as joint applicants for all purposes of the said application, and granting leave to the said the Hydro-Electric Power Commission of Ontario as joint appellants with the said the Canadian Electrical Association to appeal to the Supreme Court of Canada upon the question referred to in paragraph 2 of the said order.

2. That the Railway Association of Canada be added as respondent in the said appeal.

C. P. FULLERTON,
Chief Commissioner

T. C. NORRIS,
Commissioner.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 25

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Application of the Canadian National Railway Company for an Order varying or rescinding Order No. 40392, dated February 24, 1928, authorizing the City of Quebec to construct a subway under the tracks of the Canadian National Railway on the Charlesbourg Road, Quebec, as amended by Order No. 41473, dated September 24, 1928, by placing a portion of the cost of the work of constructing the said subway upon the Quebec Railway, Light and Power Company.

File No. 26782.21

FULLERTON, CHIEF COMMISSIONER:

This is an application of the Canadian National Railway Company for an order under section 51 of the Railway Act, varying or rescinding Order of the Board No. 40392 dated February 24, 1928, authorizing the city of Quebec to construct a subway under the tracks of the Canadian National Railway Company on the Charlesbourg road, in the city of Quebec, by placing a portion of the cost of the work of constructing said subway upon the Quebec Railway, Light and Power Company, Limited, and in other respects.

Order No. 40392 authorizes the city of Quebec to construct the subway and provides that forty per cent of the cost of constructing the said subway, but not exceeding the sum of \$25,000, be paid out of the Railway Grade Crossing Fund, the remainder of the cost of construction, as well as the cost of maintenance, to be divided equally between the applicant and the Canadian National Railways.

The application for the subway, as originally launched on June 15, 1925, by the city of Quebec, asked that the Quebec Railway, Light and Power Company, hereinafter called the Tramway Company, bear a share of the cost of construction. The company was operating tramways in the city of Quebec and at the time had a line which ended just south of the crossing in question. The railway opposed the work claiming that it was not necessary. The matter came on for hearing at Quebec on January 23, 1926. Counsel representing the Tramway Company stated that they were not using the crossing, that they did not intend to use it, that there was no prospect even in the far distant future of their ever using it, and consequently they strongly objected to paying any portion of the cost of construction.

In view of the position taken by the Tramway Company the city of Quebec requested that the matter be allowed to stand.

On May 12, 1927, the city wrote the Board stating that it did not intend to ask that the Tramway Company pay a portion of the cost of construction and that the question was now between the city and the Canadian National Railway Company.

On November 22, 1927, the matter again came on for hearing before the Board, and on February 24, 1928, Order No. 40392 above referred to for the construction of the subway was made.

The work was proceeded with and completed on December 16, 1929.

On February 22, 1930, the city of Quebec gave notice of an application for an order authorizing the operation of a tramway service through the subway. This came on for hearing before the Board on June 4, 1930. The Tramway Company was represented at that hearing by Mr. Robt. Taschereau, K.C., who took the position that his clients did not want to build through the subway but that if they were supplied with a road free of cost they were willing to build.

The Board reserved judgment and on July 8, 1930, made an order—

(1) "That the Quebec Railway, Light and Power Company Limited, be, and it is hereby directed to extend its street railway system over Charlesbourg road to the city limits, in the city of Quebec.

(2) "That the Quebec Railway, Light and Power Company Limited, be, and it is hereby authorized to pass its street railway system through the tunnel under the tracks of the Canadian National Railways."

In order to understand the first clause in the order it is necessary to explain that the Tramway Company was incorporated by the Legislature of the province of Quebec and its undertaking subsequently declared by the Parliament of Canada to be for the general advantage of Canada, thus bringing it under the jurisdiction of the Board. After the last mentioned order was made the Tramway Company began and have ever since continued to operate their cars through the subway. In answer to the application that they should pay a portion of the cost of constructing the subway the Tramway Company say:—

(1) That they were compelled by the city of Quebec against their own wishes to build across the subway.

(2) That the city of Quebec was obliged at its own expense to furnish them with a road through the subway.

The short answer to these contentions is that the Board is not at all concerned with the reasons which actuated the Tramway Company in crossing the subway. The important fact is that they are using the subway and that the cost of its construction was very materially increased by the provision which was made for its use by the Tramway Company. I hold that the Tramway Company is a party "interested or affected by" the order for the construction of the subway within the meaning of section 39 of the Railway Act.

C.P.R. v. Toronto Transportation Commission, 1930, A.C. 686.

If anything turned on the question of the Tramway Company being forced by the city to cross the subway, I would hold on the evidence that such was not the fact.

In November, 1928, the officers of the city of Quebec and the Tramway Company consulted as to the height of the subway having in view the crossing by the Tramway Company, and in April, 1929, they agreed as to the height having the same object in view. When the subway was being built the Tramway Company laid the tracks through the subway and in November, 1929, arranged with the Canadian National Railway Company as to the method of attaching their trolley trough to the girders of the subway.

The most convincing proof, however, is afforded by the attitude of the Tramway Company on the hearing before the Board for leave to cross.

Under their charter, 15 George V, chapter 91, Quebec, section 44, it is provided that "if any municipality or any part of a municipality adjacent to the city be annexed thereto, the city council may, by resolution, order the extension through such annexed territory, of the company's lines, and the company shall be obliged to carry out the said extension within three months after the receipt of such order from the council. But *such extension shall not be required* if the said railway be already constructed therein or if it *be not justified by the needs of the population of the territory so annexed.*"

On the hearing before us the superintendent of the Tramway Company stated that the daily revenue from the operation of cars through the subway was \$5 and the daily expenses \$22.

On the application for leave to operate across the subway not a line of evidence was given to show that the extension was "justified by the needs of the population of the territory so annexed." The Tramway Company were represented by counsel at the hearing and were clearly in a position, had they so desired, to oppose the order on the ground that the extension was not required.

As to the ground taken that the city of Quebec was bound to furnish the Tramway Company with a road over which to operate its cars, there is in my opinion no substance whatever in the contention that this relieves the Tramway Company from the obligation to contribute to the cost of the subway. While it may be perfectly true that the city by implication is bound to furnish the road over which the tramway is to operate, there is certainly nothing in the charter which obliges the city to provide subways under steam railway tracks to enable the Tramway Company to avoid the dangers of level crossings.

The accounts on the Board's file show that the total cost of the subway was \$100,877.92. The paving and sidewalks, according to the accounts submitted by the city, amount to \$16,680.54, and as it would have cost \$600 or \$700 to construct a gravel road through the subway up to the standard of the existing road, I have deducted \$680.54 from the amount, and put in the sidewalks and paving at \$16,000, the amount mentioned by the chief engineer of the city of Quebec as being the cost of these works. It was stated at the hearing that the road was a dirt road. The pavement and sidewalks constituted an improvement for which the city should pay, in accordance with the well established practice of the Board. Deducting this amount from the total cost of the subway, we get \$84,877.92 as the cost of the portion of the work that should be divided between the three parties. The Board estimates that the 52-foot structure cost \$6,613 more than the 41-foot structure, which the Canadian National Railway Company claim would have taken care of the traffic satisfactorily, if the Tramway Company had not been provided for. It appears that the portion of the subway that the city constructed, apart from the paving and sidewalks, cost \$68,863.99 and I have deducted 21 per cent from certain items, in order to arrive at the cost of a 41-foot subway, and the amount which had to be expended in order to provide room for the tramway. The percentage of 21 is taken as the difference between the lengths of a 52-foot and a 41-foot subway. There are, of course, certain items which would be the same for both subways, and from these I have made no deductions. The amounts deducted total \$6,548.03 and adding to this the sum of \$6,613, the cost of the 52-foot structure over the 41-foot structure, a total of \$13,161.03 is obtained, being the cost incurred by reason of the construction of the wider subway in order to make room for the tracks of the Tramway Company.

I would apportion the cost of constructing the subway between the city of Quebec, the Canadian National Railway Company and the Tramway Company.

As stated above \$16,000, the cost of the paving and the sidewalks should be paid by the city.

The balance of \$84,877.92 should be divided and paid as follows:—

1. The cost of widening the subway 11 feet in order to take care of the Tramway Company's tracks to be borne and paid 50 per cent by the city and 50 per cent by the Tramway Company.
2. The balance of \$71,716.89 to be borne and paid 50 per cent by the city and 50 per cent by the Canadian National Railway Company—\$35,858.45.

The following are the amounts:—

City to pay for construction of subway.. . . .	\$35,858 45
City to pay for paving and sidewalks.. . . .	16,000 00
City to pay for widening subway.. . . .	6,580 51
Tramway Company for widening subway.. . . .	6,580 51
Canadian National Railway Company to pay for subway.. . .	35,858 45

Deducting the proper portions of the \$25,000, paid from the Railway Grade Crossing Fund the amounts payable by the respective parties are as follows:—

City for paving and sidewalks—no deduction.. . . .	\$16,000 00
City for widening subway.. . . .	4,580 51
City for construction of subway.. . . .	25,358 45
	<hr/>
Tramway Company to pay for widening subway.. . . .	\$45,943 96
Canadian National Railway Company to pay for construction of subway.. . . .	4,580 51
	<hr/>
	25,358 45

OTTAWA, January 23, 1932.

Deputy Chief Commissioner Labelle and Commissioner Norris concurred.

ORDER NO. 48062

In the matter of the application of the Canadian National Railway Company, under Section 51 of the Railway Act, for an Order varying or rescinding the Order of the Board No. 40392, dated February 24, 1928, authorizing the City of Quebec to construct a subway under the tracks of the Canadian National Railways on the Charlesbourg Road, in the City of Quebec, as amended by the Order of the Board No. 41473, dated September 24, 1928, by placing a portion of the cost of the work of constructing the said subway upon the Quebec Railway, Light and Power Company, Limited, and in other respects.

File No. 26782.21

MONDAY, the 1st day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
F. A. LABELLE, *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, January 12, 1932, in the presence of counsel for the Canadian National Railways, the City of Quebec, and the Quebec Railway, Light and Power Company, Limited, and what was alleged,—

The Board Orders: That the said Order No. 40392, dated February 24, 1928, be, and it is hereby, further amended by striking out the words “the remainder of the cost of construction, as well as the cost of maintenance, to be divided equally between the applicant and the Canadian National Railways,” after the word “Fund” in the third line of paragraph 2 of the order, and substituting in lieu thereof the following, namely:—

“the cost of the paving and the sidewalks of the subway, estimated at \$16,000, to be paid by the city; the remainder of the cost of construction, estimated at \$84,877.92, to be divided and paid as follows: (a) the sum of \$13,161.03, being the cost of widening the subway 11 feet in order to take care of the Quebec Railway, Light and Power Company's tracks, to be borne and paid fifty per cent by the city and fifty per cent by the Quebec Railway, Light and Power Company, Limited, less the propor-

tionate amount payable from the Railway Grade Crossing Fund; and (b) the balance of \$71,716.89 to be borne and paid fifty per cent by the city and fifty per cent by the Canadian National Railways, less the proportionate amount payable from the Railway Grade Crossing Fund."

2. That paragraphs 6 and 7 of amending Order No. 41473, dated September 24, 1928, be rescinded, and the following substituted therefor:—

"6. That the Canadian National Railways perform future maintenance of the two abutments and steel span, and bear the cost thereof.

"7. That all other maintenance work be performed, and the cost thereof borne and paid, by the city."

C. P. FULLERTON,
Chief Commissioner.

Application of the business men and farmers of Alvinston, Ontario, and the township of Brooke for a re-hearing of the application of the Canadian National Railway Company for an Order recommending to the Governor in Council the abandonment of the operation of the Alvinston subdivision of its railway and of the Order made thereon.

File No. 22586.1

Heard at Glencoe, Ontario, January 8, 1932.

JUDGMENT

FULLERTON, CHIEF COMMISSIONER.

On October 28, 1930, the Canadian National Railway Company applied to this Board under section 19 of the Statutes of Canada 9-10 George V, c. 13, for an order recommending to the Governor in Council the abandonment of the operation of the Alvinston Subdivision of its railway.

On December 7, an order was made recommending for the approval of the Governor in Council that the Canadian National Railway Company be permitted to abandon the operation of this subdivision, except that portion northwest of Glencoe to Gillies Siding, a distance of 4.22 miles. This exception was made to ensure service to the Dominion Petroleum Company Limited for shipping crude oil in tank cars from that point.

Protests against the closing of the subdivision having been received from farmers and others living in the vicinity of the line, the Board decided to grant a rehearing which was held at Glencoe on the 8th day of January, 1932.

The Alvinston Subdivision which is sought to be closed extends from Glencoe on a line of the Canadian National Railway Company running from London to Windsor in a northwesterly direction twenty-one miles to Kingscourt on the line of the Canadian National Railway Company running from London to Sarnia. Alvinston, a village of about 700 people, situate about half way between Glencoe and Kingscourt, is the only station on this line. There are, however, five sidings at which freight may be loaded or unloaded. These sidings are located at the following respective distances from Glencoe:—

	Miles
Gillies.. . . .	4.22
Shields.. . . .	5.74
Grays.. . . .	7.67
Armstrong.. . . .	15.7
Souterville.. . . .	17.99

In considering the question of whether or not the order recommending the abandonment of this line should be upheld one naturally looks first at the posi-

tion in which it will leave the present users of the line in regard to railway service. The situation in the present case will be as follows: They will still have the two Canadian National main lines above referred to, a Canadian Pacific Railway line running between London and Windsor and crossing the Alvinston Subdivision about two miles north of Glencoe, and the Michigan Central Railway running in an easterly and westerly direction through Alvinston.

In making his case Mr. LeSueur, who acted for the parties opposing the closing of the line, directed his evidence mainly to the sugar beet industry which he claimed will be destroyed by the closing of the line. His important witness in this connection was R. Williamson, who has been engaged for some years in getting sugar beet acreage in Brooke township. His evidence showed that 90 per cent of the sugar beets in this district was shipped from Alvinston, Armstrong and Souterville. From 1927 to 1929 inclusive, there were shipped from these points 11,367 tons of sugar beets of which 34 per cent was shipped from Alvinston.

Souterville is between four and five miles and Armstrong about six miles by wagon road from Kingscourt, on the line of the Canadian National Railway Company running from London to Sarnia.

Deprived of service on the Alvinston Subdivision the shippers of sugar beets from Souterville and Armstrong will be obliged to carry their product a longer distance than at present, but there is no justification for saying that the sugar beet industry will be destroyed.

An attempt was also made to show that farmers in the vicinity of the line would be handicapped in shipping hay. The witness called on this point was one Munroe, who stated that he shipped 750 tons of hay and straw in 1931, that if the railway line were closed it would make it very inconvenient and that in all probability all hay would have to be shipped by motor trucks. The witness, however, admitted that a large quantity of hay was at the present time being shipped by motor trucks and that he himself had recently purchased a motor truck which he was now using to ship his hay to market.

Taking all the evidence into consideration, I have arrived at the conclusion that the former shippers on this line will be left with ample railway facilities to enable them to get their products to market. In some cases it will mean a little longer haul by truck or wagon to reach a railway but they will still be in a much more favourable position with regard to railway service than thousands of other shippers throughout Canada.

Now let us turn to the railway company's side of the question. They say that they have been losing money every year in the operation of this line. The gross system receipts for the years 1927, 1928 and 1929 were as follows:—

1927.. . . .	\$34,679
1928.. . . .	27,969
1929.. . . .	23,463

A statement was put in the evidence showing the revenue received from the operation of this line for October and December, 1929, and February, April, June and August, 1930. The total gross system revenue received during these six months was \$12,333.75. Doubling this amount gives a total of \$24,667.50 for the year October, 1929, to October, 1930.

We must add to this amount \$2,035.93, the average yearly earnings of Gillies Siding, which were inadvertently omitted from the general statement, revenue from express \$5,078, and revenue from mail \$137.72, making a grand total of \$31,919.15. It must be remembered that these are system revenues and only a small portion of them, say about one-sixth, can properly be allocated to the Alvinston Subdivision.

Mr. LeSueur having questioned the method adopted by the railway company in arriving at the figure \$31,919.15 shown above, it was arranged at the

hearing that the railway company should prepare and file returns showing the exact amount of revenue received for the years 1930 and 1931. These figures have now been filed and show the following:—

Total receipts for 1930.. . . .	\$32,258
Total receipts for 1931.. . . .	36,646

Of these amounts the following are credited to Alvinston:—

1930.. . . .	\$25,588
1931.. . . .	22,940

It will be seen, therefore, that the great bulk of the traffic for this line is shipped from Alvinston which, as above stated, is served by the Michigan Central Railway.

The annual cost of operating the line is as follows:—

Maintenance of way and structures.. . . .	\$20,000
Wages of agents, station fuel, etc..	2,000
Train service.. . . .	8,520
Expenses—Canadian Pacific Railway Interlocker.. . . .	1,475

Total.. . . .	\$31,995
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Not only is the line being operated at a loss but if its operation is to be continued, the railway company say it will be necessary to make considerable capital expenditure to keep the line in condition to handle traffic. For example, they say that a bridge must be replaced at an expenditure of \$150,000. Mr. LeSueur in his written argument contends that this amount is excessive, and he says that the railway company previously gave the figure at from \$40,000 to \$60,000. The fact, however, remains that in either case the capital expenditure involved is substantial.

Another capital expenditure which it is said will have to be made shortly is in connection with an automatic interlocker at the crossing of the Canadian Pacific Railway. Mr. LeSueur contends that inasmuch as under the order of the Board the portion of the line from Gillies Siding to Glencoe is being continued this capital expenditure is out of the picture. Mr. Spencer, the head of the Board's Operating Department, advises me that the line retained between Gillies Siding and Glencoe will furnish only a switching service and as such will not require the expensive interlocking device necessary if the road were being operated in the ordinary way.

Mr. LeSueur has made some very ingenious calculations in connection with revenue and operating costs of the line with a view to showing that it is not really losing as much money as the railway company claims. For example, he says that Gillies Siding is 4.2 miles from Glencoe, or exactly one-fifth of the total length of the line and, consequently, that in calculating expenditures you must deduct one-fifth of the cost of maintenance of way and structure and of train service. Providing merely an infrequent switching service between Gillies Siding and Glencoe would not in my opinion modify the figures to anything like the extent claimed by Mr. LeSueur. The railway company would be delighted to cut out the service between Gillies Siding and Glencoe along with the rest of the line, but the Board felt that if this were permitted it would entirely destroy the investment of the Dominion Petroleum Company, Limited, at Gillies Siding, and for this reason required the railway company to continue a switching service to this company.

After carefully studying all the material filed, together with the evidence and the argument submitted, I can come to no other conclusion than that the Alvinston Subdivision is being operated at a heavy loss, and in my opinion the operation of this subdivision has become unnecessary and inexpedient by reason of the economic considerations involved and the Order recommending its abandonment should stand.

OTTAWA, January 28, 1932.

Commissioner Stoneman concurred.

ORDER No. 48038

In the matter of the application of the business men and farmers of Alvinston, Ontario, and the Municipal Council of the Township of Brooke, to the Board to reconsider Order No. 47784, dated December 7, 1931, made upon the application of the Canadian National Railway Company, recommending to the Governor in Council the abandonment of the Alvinston Subdivision of its railway, and to set the matter down for hearing.

File No. 22586.1

FRIDAY, the 29th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Glencoe, January 8, 1932, in the presence of counsel for the applicants and the Canadian National Railway Company, the evidence and arguments submitted, and upon reading the material filed,—

It is ordered: That the application to rescind the said Order No. 47784, dated December 7, 1931, be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48034

In the matter of the application of the City of Toronto for a rehearing on the question of jurisdiction in the matter of the application of the Corporation of the Village of Forest Hill for an Order under section 256 and/or 264 of the Railway Act directing the Canadian National Railway Company to reconstruct the existing bridge whereby the roadway of Eglinton Avenue is carried over the Company's railway in the said Village of Forest Hill in the County of York, Province of Ontario, so as to afford sufficient and adequate facilities for all traffic passing over the said bridge and the application of the City of Toronto for leave to appeal to the Supreme Court of Canada from the order of the Board No. 47439 dated September 25, 1931, on the ground that as a matter of law the Board had not jurisdiction to order a contribution from the City of Toronto toward the cost of reconstructing the said existing bridge whereby the roadway of Eglinton Avenue is carried over the company's railway in the said Village of Forest Hill.

File No. 37756.

FRIDAY, the 8th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, December 17, 1931, in the presence of counsel for the applicant the City of Toronto and the Canadian National Railways and the Village of Forest Hill, and what was alleged.

The Board Orders: That the applicant be and it is hereby granted leave to appeal to the Supreme Court of Canada from the said order of the Board No. 47439 dated September 25, 1931, upon a question of law. The question upon which the applicant desires to appeal is as follows:—

"Had the Board of Railway Commissioners for Canada under the circumstances of this case, jurisdiction under the Railway Act (Canada) to provide in Order No. 47439 dated 25th day of September, A.D. 1931, that the city of Toronto should contribute to the cost of the work referred to in said order?"

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 47995

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 20th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board Orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 32 to Tariff C.R.C. No. E-1234
Supplement 51 to Tariff C.R.C. No. E-1235
Supplement 33 to Tariff C.R.C. No. E-1244
Supplement 35 to Tariff C.R.C. No. E-1246
Supplement 20 to Tariff C.R.C. No. E-1250
Supplement 1 to Tariff C.R.C. No. E-1745

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 48005

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

FRIDAY, the 22nd day of January, A.D. 1932.

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 684, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 684, approved herein, are as follows:—

From	Rates in cents per 100 pounds
Whiteworth, Que.	5
Gagnon Siding, Que.	4
Ste. Rose, Que.	4

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 48020

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

MONDAY, the 25th day of January, A.D. 1932.

Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in tariff C.R.C. No. 685, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said tariff C.R.C. No. 685, approved herein, are as follows:—

Miles	Rates in cents per 100 pounds
15..	7½
25..	9½
40..	11½
60..	12½
70..	14½
80..	16½
120..	18

T. C. NORRIS,
Commissioner.

ORDER NO. 48019

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 25th day of January, A.D. 1932.

Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published in item 127 of Supplement No. 24 to tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 127 of Supplement No. 24 to tariff C.R.C. No. 856, approved herein, is 10 cents per 100 pounds.

T. C. NORRIS,
Commissioner.

ORDER No. 48035

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, and Order of the Board No. 47616, dated November 5, 1931:

File No. 34822.13

WEDNESDAY, the 27th day of January, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that an error has been made in certifying the normal toll in connection with item 166 of Supplement No. 18 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company,—

It is Ordered: That the said Order No.47616, dated November 5, 1931, be, and it is hereby, amended by striking out the following words and figures at the end of section 2 thereof, namely:—

“1½ cents per 100 pounds to be deducted account of boat haul.”

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48063

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 1st day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Saint John, N.B., to Yarmouth, N.S., in item 46-A of Supplement No. 23 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act. The Dominion Atlantic Railway proportion to be reported at 15½ cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal rate which but for the said Act would have been effective in lieu of that published in the said item 46-A of Supplement No. 23 to Tariff C.R.C. No. 812, approved herein, is 20 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48064

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 1st day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 298 of Supplement 25 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 298 of Supplement No. 25 to Tariff C.R.C. No. 856, approved herein, are as follows:—

From	Rates in cents per 100 pounds
Kingsport, N.S.	16½
Wolfville, N.S.	13½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48065

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 1st day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 6 of Supplement No. 22 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 6 of Supplement No. 22 to Tariff C.R.C. No. 856, approved herein, is 12½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48049

In the matter of the application of H. G. Toll, Agent, for permission to file on less than statutory notice, supplements to tariffs providing for revision of rates on grain and grain products from Western territory to United States and Canadian points.

File No. 27612.61

MONDAY, the 1st day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that, in view of an order of the Supreme Court of the United States, certain rates on grain and grain products which were established under order of the Interstate Commerce Commission effective August 1, 1931,

also authorized from points in Canada upon ten days' notice under Order of the Board No. 46724, dated May 23, 1931, are to be restored to those in effect on July 31, 1931, and it being expedient that there be uniformity of rates from points in Canada,—

The Board orders: That H. G. Toll, Agent, acting under power of attorney for originating railways, be, and he is hereby, permitted to file upon ten days' notice to the Board revised rates on grain and grain products (1) from points in the United States to points in Canada; (2) from points in Canada to points in the United States; (3) between points in the United States, via routes operating through Canada, to be published in supplements to the following tariffs, namely: C.R.C. Nos. 578, 580, 581, 591, 592, 593, 594, and 596.

And it is further ordered that reference to this order be shown on title page of the said supplements.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48078

In the matter of the rates on grain and grain products from Canadian Bay ports and other points in Ontario to the Atlantic Seaboard and St. Lawrence River Ports, for export.

File No. 27612.56

TUESDAY, the 2nd day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Whereas by Orders of the Board No. 47121, dated July 29, 1931, and No. 47139, dated August 1, 1931, the Canadian carriers were permitted to publish on less than statutory notice, tariffs, containing reduced rates on grain and grain products from Canadian bay ports and other points in Ontario to the Atlantic seaboard and St. Lawrence river ports for export, to meet reductions made by the United States lines from United States shipping points;

And whereas, as a result of action of the United States Supreme Court in setting aside the Western Grain Rates decision of the Interstate Commerce Commission, Docket 17000, Part 7, the Interstate Commerce Commission have authorized the United States carriers to reinstate rates which were in effect prior to August 1, 1931, and have issued Special Permission No. 111357 authorizing filing of tariffs or supplements on ten days' notice, effective February 20, 1932;

And whereas the Canadian lines have made application for authority to restore from Canadian points of origin the rates in effect prior to the reductions authorized under the aforesaid orders of the Board on less than statutory notice so that such changes will be effective on the same date as the restored rates from United States points,—

The Board orders: That the Canadian carriers may publish on three days' notice, effective February 20, 1932, tariffs or supplements reinstating the rates in effect prior to the reductions made effective August 1 and August 3, 1931, under authority of Orders Nos. 47121 and 47139, on grain and grain products from Canadian bay ports and other points in Ontario to the Atlantic seaboard and St. Lawrence river ports, for export.

C. P. FULLERTON,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 26

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Application of the Citizens residing below Quebec in regard to the cancellation of Trains Nos. 133 and 134 operating between Riviere du Loup and Levis, Canadian National Railways.

(File No. 27563.187)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This is an application for an order requiring the Canadian National Railways to replace trains between Riviere du Loup and Levis known as Nos. 133 and 134, which were taken off on the 10th January, 1932.

The real complaint is concerning No. 133 going west. This train formerly left Riviere du Loup at 5.20 a.m. and arrived at Levis at 9.15 a.m. The work of No. 134 going east is now done by the Maritime Express No. 2, which leaves Levis at 5.15 p.m. and arrives at Riviere du Loup at 9.15 p.m., making stops at intermediate stations, and no complaint is made in respect of taking off No. 134.

The complaint in reference to train No. 133 comes chiefly from passengers who formerly took the train at Montmagny, 36.7 miles from Levis, and intervening points, namely: St. Pierre, St. Francois, St. Valier, La Durantaye and St. Charles. They complain that they are now unable to reach Levis in time to transact business in Levis and Quebec and return the same day.

The present train service between Riviere du Loup and Levis is as follows:—

Ocean Limited, leaving Riviere du Loup at 12.10 a.m., arriving Levis at 3.10 a.m.

Maritime Express, leaving Riviere du Loup at 8.55 a.m., arriving Levis at 12.50 p.m.

Campbellton train, leaving Riviere du Loup at 4 p.m., arriving Levis at 7.55 p.m.

The evidence by the applicants was directed to establishing, first, that between the arrival of the Maritime Express at 12.50 p.m. and the departure of the Maritime Express going east at 5.15 p.m. there is not sufficient time to

enable farmers and others to transact their business and return to their homes the same evening. Second, that the farmers are handicapped by the absence of this train No. 133 in getting their milk and produce to market.

The evidence on the first head of complaint is somewhat scanty and vague. The first witness, Reverend Father Chouinard, stated in a general way that the time between trains is not sufficient to enable the farmer to do his business and return the same day.

Georges Bouchard, M.P. for Kamouraska, stated that there is not enough time between trains to enable the farmer to see doctors, lawyers and others with whom he might have business and that he is not prepared to spend money for hotels.

Charles Paquette, M.P.P. for Montmagny, stated

"that the business people want their full day in Quebec to do their business. There is banking. There is buying and selling."

Albert Lemieux, a merchant at St. Michel, stated that he came to Quebec once a week and sometimes twice a week to purchase goods, and since the change in trains he has to spend two days. His yearly turn-over, he stated, is \$40,000. When I expressed a doubt as to the necessity of all these visits, his explanation was "it is necessary to follow up the conditions of the market."

It will be observed that with the single exception of the merchant Lemieux, not one of the farmers who are supposed to be inconvenienced and handicapped by the short time between trains was called as a witness. Lemieux's evidence I regard as worthless. It may be that he visits Quebec as often as he says he does, but such visits are certainly not necessitated by his store business.

On the second head of complaint that the farmer is handicapped in getting his milk and produce to market through the loss of train No. 133, it is again to be noted that the applicants failed to call a single farmer as a witness. The main complaint here is in regard to the delivery of milk. The only witness called, who had first-hand information on the subject, was H. E. Weyman, general manager of the Levis Tramway Company. He stated that his company transported milk and produce received from the agricultural counties on the south shore to Quebec from Levis. At the present time his company is handling 200 cans a day from Levis to Quebec. They pick them up at Levis station and deliver them at the Quebec wharf. Before the early train was cancelled the dairies picked the milk up at the Quebec wharf, but now that the milk arrives in the afternoon the Tramway Company have to take it to the dairies, for which they receive from the dairies 5 cents per can of 80 pounds.

There was some suggestion during the hearing that the dairies intended to refuse milk delivered in the afternoon, but no evidence was given to establish the fact and up to the present the milk is being accepted.

There is nothing in the evidence to show that the charge of 5 cents per 80 pounds of milk paid by the dairies for delivery is deducted from the price of the milk. In the absence of evidence I cannot assume that such is the case. Taking all the evidence with regard to milk, there is nothing to establish that the farmers are in any way affected by the late arrival of the milk. At the very most they can only be damnified to the extent of 5 cents per 80 pounds, if this amount is charged against the price paid by the Dairy Company.

Mr. Weyman states that other products shipped by farmers like meat, eggs and butter is handled by his company. He says, "in order to be sold that stuff has to get to Quebec in the morning, otherwise they are at disadvantage." What the disadvantage is he does not tell us, nor can I imagine what it is. Except for the ordinary daily fluctuations in price, I am unable to see what difference it makes whether a box of butter or a case of eggs reaches the market on Thursday or Friday.

Taking the evidence given in support of the application as a whole, it is exceedingly weak and is not such as would justify the Board in saying that the passenger and express facilities under the present service are inadequate.

Now let us consider the case from the point of view of the railways. The witnesses quite frankly admitted that they use the railway only when compelled to do so by the condition of the roads. In the summer and fall milk and produce, as well as passengers, are conveyed by motor truck and motor bus. Mr. Weyman, who was called as a witness by the applicants, put the position of the railway very fairly when he said:—

“In the summer, unfortunately for the railways, there is the motor truck and bus. My sympathy is with the railways; they are required to give service in the part of the years when expenses of operation are highest, while in the summer the business is taken from them. I think the population as a whole, and especially the agricultural population, should recognize that it is unfair to ask the railways to furnish facilities at the time of maximum cost and then leave them the rest of the year.”

The passenger train earnings of No. 133 per mile for the period from November 2 to November 7 were:—

Riviere du Loup to Riviere Ouelle	17 cents.
Riviere Ouelle to Levis	61 cents.

For the period from November 16 to November 21:—

Riviere du Loup to Riviere Ouelle	21 cents.
Riviere Ouelle to Levis	68 cents.

Mr. Fairbairn on behalf of the railway company stated that for the year 1930, the last annual figures available, the average cost per train mile for passenger trains was 2·83, and that every week they find passenger traffic approximately 30 per cent less than the same week in the previous year. He further stated that the heaviest decrease is in the local traffic and not in the long haul.

Other statements of passenger earnings of train No. 133 and other trains operating between Riviere du Loup and Levis were filed by the railway company. It is unnecessary to discuss the figures in detail as they establish beyond all question that train No. 133 is being operated at a heavy financial loss.

Train No. 133 has been running for many years—practically ever since the line was built. The people living east of Levis have become so accustomed to using this train that they now regard it as a permanent institution. I am satisfied, however, that when they realize the true facts and the urgent necessity for economy on the part of the railways, they will willingly put up with the slight inconvenience which they may suffer through the removal of this train.

Some complaint was made about train No. 1 being frequently late, and Mr. Fairbairn offered at the hearing to run a local train from Riviere du Loup to Levis in the event of No. 1 being late.

This application will be refused but on the condition that, if it becomes evident to the railway authorities that train No. 1 is going to be over one hour late in arriving at Levis, a local train running on the schedule of No. 1 shall be operated between Riviere du Loup and Levis.

OTTAWA, February 4, 1932.

Commissioner Stoneman concurred.

LABELLE, DEPUTY CHIEF COMMISSIONER:

I agree with the Chief Commissioner regarding the statement of facts in the draft of his judgment. As he mentions, the proof made by the applicants is very weak and I notice a lack of evidence to justify granting the application.

Nevertheless, I am convinced by the records of this case that the citizens of the counties of L'Islet, Bellechasse and Kamouraska need a morning train going to Levis and that it would be in the general interest. This is proved by the petitions on file, by the very large delegation attending the sittings of the Board and by the submissions of the different members of those counties, representing the general opinion of the public in their respective constituencies.

In view of these facts, I believe that the railway company should be requested to either change the time of one of the trains actually in operation or to make a trial of a local passenger train running from Riviere Ouelle or thereabout, to Levis, unless it is well established to the Board by the company that a change of time is an impossibility or that the operation of another train will merely be another source of deficit. This improvement would be for the winter months only, as it was acknowledged by the applicants at the hearing that they use automobiles and trucks during the summer.

OTTAWA, February 8, 1932.

ORDER No. 48109

In the matter of the application of the citizens residing below Quebec for an Order requiring the Canadian National Railways to re-establish the operation of trains Nos. 133 and 134 between Riviere du Loup and Levis, discontinued as of January 10, 1932.

File No. 27563.187

TUESDAY, the 9th day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Levis, January 27, 1932, in the presence of counsel for and representatives of the applicants and the Canadian National Railways, and what was alleged; and upon reading the further submissions filed,—

The Board orders: Subject to the condition that if it becomes evident to the railway authorities that train No. 1 is going to be over an hour late in arriving at Levis, a local train running on the schedule of No. 1 shall be operated between Riviere du Loup and Levis, that the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Application of Columbia Cannery et al for an Order of the Board directing the railway companies to publish (1) on canned goods, shipped from British Columbia points to Prairie Provinces, the same tariff provision governing stop-off for completion of load as in effect with respect to similar shipments from Eastern Canada; (2) reduced rates on canned goods, carloads, minimum weight 24,000 pounds, from British Columbia shipping points to destinations in the Prairie Provinces.

File 8641.71

BY THE BOARD:

(I)

STOP-OFF FOR COMPLETION OF LOAD

Applicants state the packing of canned goods is highly specialized, i.e., one factory confined entirely to the packing of tomatoes, another corn, another fruit, etc., consequently shipments must be made between factories when making up

assorted cars. At present this assembling has to be performed by trucking or payment of the published freight rate between the factories. In the prairie market applicants must keep competition from eastern Canadian canners, and, as the latter have stop-off for completion of load privilege, it is alleged that the absence of such arrangement in British Columbia results in unjust discrimination.

The situation in Eastern Canada as to packing and making up mixed carloads is similar to that in British Columbia. The stop-off arrangement in Eastern Canada has been in effect for a great many years. It permits a part carload shipment of canned goods originating at one point to be stopped-off in transit at other points for completion of load at an additional charge of \$3 per car for each stop. Freight charges are assessed on the weight of the completed shipment, subject to minimum carload weight, from point of origin to final destination; there are other minor provisions regarding charge for out-of-line haul, etc.

The railways state the arrangement in Eastern Canada was originally established to meet water competition; that steamers plying along the lake front picked up L.C.L. lots of canned goods produced by different parties, and these were consolidated and forwarded from the head of the lakes in carloads. They contend that, under the circumstances, this does not constitute unjust discrimination against British Columbia shippers of canned goods, and state:—

“ . . . but if the Board thinks otherwise, such discrimination should be removed by the withdrawal of the eastern arrangement.”

It appears from the Board's records that the stop-off arrangement in Eastern Canada was first established in Ontario territory, west of Toronto, by the Michigan Central, Wabash, and T.H. & B. Railways, to retain traffic which, otherwise, would have been forwarded by water lines operating from such points as Hamilton, St. Catharines, Niagara-on-the-Lake, etc. In 1909 the Grand Trunk Railway published the same arrangement, also confined to the territory west of Toronto. In 1912, on an application from the British Canadian Canners, alleging discrimination, the Board ordered that the same arrangement be granted at Bowmanville and Cobourg. Subsequently, the railway companies have voluntarily greatly extended the territory to include practically all canning points in Ontario and Quebec. In 1916, the Board disallowed a proposed increase in the stop-off charge from \$3 to \$5 per car. Applicants questioned the statement of the railways regarding reason for origin of the arrangement in Eastern Canada, and submitted that it should have been substantiated by evidence, and they assert that consolidation by eastern shippers of less than carload lots at the lake ports and forwarding in carloads did not actually start until about 1927 or 1928.

In view of the arrangement having been in force for a great many years; that it is not confined to strictly water competitive points of origin; that it applies to all destinations throughout Canada, and is not restricted to points which can be reached via water carriers; that it is not a seasonal arrangement in effect only during the period of navigation each year, but continued in force throughout the year; we do not consider that, upon what is before it on this record, the Board would be warranted in assuming that the arrangement is solely in force to meet water competition, nor that, especially without those using it having had an opportunity of being heard, the Board would be justified in directing or authorizing the railways to withdraw the arrangement in Eastern Canada to meet the applicants' allegations as to unjust discrimination. On the other hand, where canners in British Columbia are in active competition with the eastern Canadian canners in the prairie market, we consider that, to avoid discrimination, the railways should be directed to publish, on canned goods shipped from British Columbia points to Prairie Provinces, the same tariff provision governing stop-off for completion of load as in effect with respect to similar shipments from Eastern Canada.

(II)

REDUCED RATES ON CANNED GOODS, CARLOADS, MINIMUM WEIGHT 24,000 POUNDS,
FROM BRITISH COLUMBIA POINTS TO PRAIRIE DESTINATIONS

From British Columbia canning points to certain prairie points, but not the entire territory, three (3) sets of rates have been established by the railway companies on canned goods, in carloads, which are subject to three minimum weights, viz., 24,000, 40,000 and 60,000 pounds. Applicants request that the lower rates applicable to the 60,000 pounds minimum be applied to 24,000 pounds minimum, the effect of which would be to entirely eliminate the higher rates now published for the 24,000 and 40,000 pound cars. The principal reason advanced in support of this request is a trade condition, i.e., at the present time, owing to falling prices and other conditions, the prairie jobbers are carrying small stocks, and the cannery allege it is difficult for them to obtain orders for 60,000 pound cars. Counsel for applicants stated the lower rates for the 40,000 and 60,000 pound cars were established as a concession to enable the British Columbia cannery to compete with the eastern Canadian cannery in this market, but this is not borne out by the record. A complete statement concerning the basis and the history of these rates is set out in the Board's judgment of June 11, 1925, Volume XV, Board's Judgments, Orders and Rulings, p. 162, and, as this has been referred to in the submissions of both applicants and the railways, it is unnecessary to here repeat it. In that case eastern Canadian cannery alleged that these lower rates from British Columbia for 40,000 and 60,000 pound cars were unjustly discriminatory against them.

The normal rates on canned goods from both Eastern Canada and British Columbia to the Prairie Provinces are the 5th class rates. From Eastern Canada there is only one basis in effect, viz., 5th class rates, and which carry the minimum weight provided in the Canadian Freight Classification, viz., 24,000 pounds. From British Columbia 5th class rates apply on 24,000 pound cars. On 40,000 pound cars, the rates to Winnipeg, which apply as maxima to points west thereof, are 83½ per cent of the normal rate. On 60,000 pound cars, they are 74 per cent of the 5th class rates. These lower rates as set out in the judgment above referred to result from a competitive situation. The normal rates from Eastern Canada, not only on canned goods, but all traffic, are, of course, on a lower basis or rate level than the rates from British Columbia, and such difference has been under review and prescribed by the Board in numerous judgments, and the reasons given, consequently, will not be here enlarged upon.

Exhibit 2, filed by applicants, contains certain comparisons of rates, revenue, and car mile earnings, and calculations of rates from Vancouver based on the car mile earnings from Chatham, Ont., to the same destination. This exhibit does not furnish any proof that the present rates from Vancouver are unreasonable, because it makes no allowance for the difference in rate level existing between the rates compared, as above referred to, nor for a variation and tapering of the rate per car mile as the distance hauled increases, which is always to be found except where rates are affected by some condition such as competition, grouping, constructive mileage, etc., and consequently do not reflect a normal scaling.

It appears from the record that until recently the cannery had no difficulty in getting the jobber to purchase 60,000 pounds of canned goods at one time, and the present condition may be only temporary, because of the hesitancy of buyers to purchase in large quantities, fearing price reductions, and, when conditions are again stabilized, the present difficulty may disappear. There is nothing on the record showing average weights of the carloads of canned goods shipped into this market from Eastern Canada. Witnesses gave no evidence enabling comparison of volume or proportion of this traffic shipped from Eastern

Canada as against that from British Columbia at the present time, or whether the situation in this respect is any different at present as compared with two or three years ago.

One material factor in connection with alleged rate disadvantage is the matter of the total burden of rate paid from point of origin to destination. Ignoring the lower rates published from British Columbia on 40,000 and 60,000 pound cars, and taking only the rates applying on 24,000 pound cars, the applicants, by reason of their geographical advantage in location, have access to the bulk of the prairie market at rates lower than the all-rail rates from Eastern Canada. From Vancouver or Mission the rates are lower than from Eastern Canada to all prairie points approximately 80 miles west of the Manitoba boundary line. From Ashcroft, Kamloops, Kelowna, Oliver, Penticton, Rutland and Vernon, with lower rates than from Vancouver or Mission, the boundary line is further east, meeting the Eastern Canadian all-rail rate at Brandon. The rail-lake-and-rail rates from Eastern Canada are 6 cents per 100 pounds lower than the all-rail rates, and there are also, of course, in effect during the season of navigation still lower rates from quite a number of the eastern Canadian canning points from which shipments can be made by water to the head of the lakes. However, all eastern canning points do not have the advantage of the latter, and, consequently, have to pay higher rates than their competitors who are so located that they can take advantage of the all-water rates to the head of the lakes.

Upon careful consideration of the record in this case, we consider the application for reduced rates on canned goods from British Columbia points to prairie destinations should be refused.

A. D. CARTWRIGHT,

Secretary.

OTTAWA, February 10, 1932.

ORDER NO. 48136

In the matter of the application of the Columbia Cannery Limited, Kamloops Cannery, Occidental Cannery, Limited, Rowcliffe Canning Company, Rutland Cannery, Limited, Bulman's Limited, A. P. Slade & Company, Limited, Holsum Packing Company, Limited, MacDonald Jam Company, Limited, MacKinnon Canning Company, Limited, Dominion Cannery B.C. Limited, Farmers Canning Company, Limited, Broder Canning Company, Limited, and Empress Manufacturing Company, hereinafter called the "Applicants," for an Order directing the Railway Companies to publish (1) on canned goods, shipped from British Columbia points to Prairie Provinces, the same tariff provision governing stop-off for completion of load as in effect with respect to similar shipments from Eastern Canada; and (2) reduced rates on canned goods, carloads, minimum weight 24,000 pounds, from British Columbia shipping points to destinations in the Prairie Provinces.

File No. 8641.71

MONDAY, the 15th day of February, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, October 23, 1931, in the presence of counsel for the applicants, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged; and upon reading the further submissions filed,—

The Board orders as follows:

That the Canadian National and the Canadian Pacific Railway Companies be, and they are hereby, directed to publish, effective not later than March 1, 1932, on canned goods, shipped from British Columbia points to Prairie Provinces, the same tariff provision governing stop-off for completion of load as in effect with respect to similar shipments from Eastern Canada.

2. That the application for reduced rates on canned goods, carloads, minimum weight 24,000 pounds, from British Columbia shipping points to destinations in the Prairie Provinces be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48112

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Sections 248 and 276 of the Railway Act, for leave (a) to open for the temporary carriage of traffic its Lulu Island Branch from the connection of the said branch with the Canadian Northern Pacific Railway Company's track on Columbia Street, in the City of New Westminster, Province of British Columbia, westerly across the north arm of the Fraser River, to a connection with the track of the Canadian Northern Pacific Railway Company at Woodward's Landing, Lulu Island, a distance of 14.21 miles; (b) to operate over the east leg of the wye at the junction of the said track with the Canadian Northern Pacific Railway Company at Woodward's Landing, 0.23 of a mile in length; (c) to operate over the track of the Canadian Northern Pacific Railway Company from Woodward's Landing easterly, for a distance of 1.64 mile, to a point in the northern boundary of Lot 8, Block 3, North, Range 5 West, Lulu Island; and (d) to operate over the trestle bridge across the north arm of the Fraser River.

File No. 38095.1

TUESDAY, the 9th day of February, A.D. 1932.

Hon. C. P. FULLERTON; K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized—

- (a) to open for the temporary carriage of traffic its Lulu Island Branch from the connection of the said branch with the Canadian Northern Pacific Railway Company's track on Columbia street, in the city of New Westminster, province of British Columbia, westerly across the north arm of the Fraser river, to a connection with the track of the Canadian Northern Pacific Railway Company at Woodward's Landing, Lulu Island, a distance of 14.21 miles;
- (b) to operate over the east leg of the wye at the junction of the said track with the Canadian Northern Pacific Railway Company at Woodward's Landing, 0.23 of a mile in length;

- (c) to operate over the track of the Canadian Northern Pacific Railway Company from Woodward's Landing easterly, for a distance of 1.64 mile, to a point in the northern boundary of lot 8, block 3, north, range 5 west, Lulu Island; and
- (d) to use and operate the bridge across the north arm of the Fraser river; the speed of trains to be restricted to fifteen miles an hour.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48113

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 9th day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 28 to Tariff C.R.C. No. E-1230.
Supplement 52 to Tariff C.R.C. No. E-1235.
Supplement 1 to Tariff C.R.C. No. E-1737.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48157

In the matter of the application of the Gutta Percha and Rubber, Limited, and the Dunlop Tire and Rubber Goods Company, Limited, Toronto, Ont., for a ruling of the Board as to the ratings applicable on a shipment made by the company first named on May 29, 1930, consigned to the Hudson Bay Mining and Smelting Company, Limited, Flin Flon, Man., and a shipment made by the second named company on May 22, 1931, consigned to Carter Halls Aldinger, Limited, Churchill, Man.

File No. 33365.90

WEDNESDAY, the 17th day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 16, 1932, in the presence of representatives of the Gutta Percha and Rubber, Limited, the Dunlop Tire and Rubber Goods Company, Limited, the Goodyear Tire and Rubber Company of Canada, Limited, the Toronto Board of Trade and the Rubber Association of Canada, the Canadian Manufacturers' Association, and the Canadian Freight Association; and what was alleged,—

The Board Declares:

1. That on the shipment from Gutta Percha and Rubber, Limited, Toronto, Ont., on May 29, 1930, consigned to the Hudson Bay Mining and Smelting Company, Limited, Flin Flon, Man., and described on bill of lading as consisting of rubber hose, rubber stationary conveyor, rubber belting and hardware, the ratings legally applicable under the provisions of Canadian Freight Classification No. 18, were second class L.C.L. on the hardware as per item 19, page 169, and fourth class C.L. on the balance of the shipment, item 25, page 240, applying on the rubber belting as well as that portion described as rubber stationary conveyor, and item 35, page 240, applying on the rubber hose.

2. That on the shipment from the Dunlop Tire and Rubber Goods Company, Limited, Toronto, Ont., on May 22, 1931, consigned to Carter Halls Aldinger, Limited, Churchill, Man., and described on bill of lading as consisting of grain conveyor, the rating legally applicable was the fourth class C.L. rating provided for rubber belting by item 25, page 240, of Canadian Freight Classification No. 18.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48160

In the matter of the application of C. N. Ham, Agent, on behalf of Express Companies subject to the jurisdiction of the Board, for approval of Supplements "Q" and "R" to Express Classification for Canada No. 7.

Files Nos. 4397.109, 4397.110.

THURSDAY, the 18th day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that copies of the proposed Supplements "Q" and "R" were furnished to the various trade bodies and commercial organizations as listed in the Board's General Orders Nos. 271, 348, 353, 469, and 471, and no objections thereto having been filed with the Board,—

It is ordered: That the said Supplements "Q" and "R" to Express Classification for Canada No. 7, be, and they are hereby, approved; the said supplements to be included with and published in Express Classification for Canada No. 8.

And it is further ordered that the following changes in ratings be, and they are hereby, approved for publication in Express Classification for Canada No. 8:—

Chairs, rustic, including settees and benches—

Boxed or crated	1
Not boxed or crated	1½ to 1

Hat or clothes trees, wooden (except revolving), with hooks and pegs detached—

Boxed, crated, or protected by excelsior and wrapped in paper....	1
Packed otherwise	3 to 1

C. P. FULLERTON,
Chief Commissioner,

Re Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders 201 and 349.

File No. 1700.338

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1931.

NOTE.—First two days over free time \$1 per day; three days or more, \$5 per day.

EASTERN CANADA

Month, 1931	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
January.....	156,800	148,411	94.65	8,389	5.35	7,097	4.53	1,292	0.82
February.....	159,335	151,289	94.95	8,046	5.05	6,810	4.27	1,236	0.78
March.....	170,917	162,303	94.96	8,614	5.04	7,276	4.26	1,338	0.78
April.....	167,847	159,690	95.14	8,157	4.86	6,882	4.10	1,275	0.76
May.....	168,275	159,272	94.65	9,003	5.35	7,525	4.47	1,478	0.88
June.....	161,298	153,281	95.03	8,017	4.97	6,692	4.15	1,325	0.82
July.....	157,467	149,231	94.77	8,236	5.23	6,768	4.30	1,468	0.93
August.....	147,441	140,025	94.97	7,416	5.03	6,103	4.14	1,313	0.89
September.....	153,209	146,054	95.33	7,155	4.67	5,985	3.91	1,170	0.76
October.....	171,394	163,321	95.29	8,073	4.71	7,044	4.11	1,029	0.60
November.....	154,772	147,606	95.37	7,166	4.63	6,099	3.94	1,067	0.69
December.....	127,186	120,228	94.53	6,958	5.47	5,988	4.71	970	0.76
Total.....	1,895,941	1,800,711	.....	95,236	.....	80,269	.....	14,961	.....
Monthly Average.....	157,995	150,059	94.97	7,936	5.03	6,689	4.24	1,247	0.79

WESTERN CANADA

Month, 1931	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
January.....	72,465	69,378	95.74	3,087	4.26	2,745	3.79	342	0.47
February.....	70,058	67,410	96.22	2,648	3.78	2,327	3.32	321	0.46
March.....	71,750	69,411	96.74	2,339	3.26	2,075	2.89	264	0.37
April.....	71,724	69,780	97.29	1,944	2.71	1,702	2.37	242	0.34
May.....	69,860	67,121	96.08	2,739	3.92	2,451	3.51	288	0.41
June.....	72,155	70,553	97.78	1,602	2.22	1,410	1.95	192	0.27
July.....	60,966	59,283	97.24	1,683	2.76	1,389	2.28	294	0.48
August.....	67,321	65,456	97.23	1,865	2.77	1,450	2.15	415	0.62
September.....	91,003	88,391	97.13	2,612	2.87	2,209	2.43	403	0.44
October.....	124,645	120,233	96.46	4,412	3.54	3,811	3.06	601	0.49
November.....	108,551	104,589	96.35	3,962	3.65	3,654	3.37	308	0.28
December.....	83,309	79,885	95.89	3,424	4.11	3,118	3.74	306	0.37
Total.....	963,807	931,490	.....	32,317	.....	28,341	.....	3,976	.....
Monthly Average.....	80,317	77,624	96.68	2,693	3.32	2,362	2.91	331	0.42

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF NOVEMBER, 1931

Railway accidents 207, involving 15 persons killed and 259 injured
 Railway accidents at highway crossings.... 39, involving 7 persons killed and 64 injured

	Killed	Injured
Passengers.. . . . .	..	52
Employees..	1	179
Others..	21	92
	<hr/> 22	<hr/> 323

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NOVA SCOTIA

- 1 Automobile—N.S. license 86461.

NEW BRUNSWICK

- 2 Automobile—Ran into side of train: N.B. licence J-6689; Ill. licence 1-349-777.
 1 Automobile—Excessive speed of auto. Licence N.B. W-6388.

QUEBEC

- 6 Automobile—Auto driver failed to stop for crossing. Que. licences 81482, H-27317
 128582, 110755, H-25597, H-54644.
 1 Automobile—Ran into side of train. Que. licence T-3540.
 1 Automobile—Skidded into side of train. Vermont licence 9-867.
 1 Auto truck—Que. licence X-531.
 1 Motorcycle—Que. licence N-812.

ONTARIO

- 2 Automobile—Ran into side of train. Ontario licences AH-141, SH-989.
 1 Automobile—Ran through crossing gates and into side of train. Ont. licence KD-45.
 1 Automobile—Ran into motor-car. Licence Ont. NC-171.
 1 Automobile—Driver of auto intoxicated. Licence Ont. NS-624.
 6 Automobile—Ontario licences O-1336, O-2599, KY-930, OS-584, KL-967, NE-596.
 1 Pedestrian—Under influence of liquor.
 1 Pedestrian.

MANITOBA

- 1 Automobile—Ran into side of train. Man. licence 50919.
 4 Automobile. Man. licences T-103-372, T-102-341, 79-762, 61-761.

SASKATCHEWAN

- 2 Automobile—Ran into side of train. Sask. licences 19-938, 3-276.
 1 Automobile—Defective brakes on auto. Sask. licence D-185.
 1 Auto truck—Driver of truck intoxicated. Sask. licence T-3271.

ALBERTA

- 3 Automobile—Alta. licences 18-907, 41-935, CT-9951.

Of the 39 accidents at highway crossings, 9 occurred at Protected crossings and 30 at Unprotected crossings. Seventeen (17) of the accidents occurred during the daylight hours and 22 at night.

OTTAWA, February 18, 1932.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI**Ottawa, March 15, 1932****No. 27**

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Complaint of the Deputy Minister of Justice on behalf of the Dominion Government against the Ottawa Electric Railway Company for a breach of a certain agreement between the Crown and the Company, dated September 25, 1908, for the operation of an electric tramcar service over the electric railway on the Dominion Experimental Farm, and for an order directing the company to renew and continue the service; and for the imposition of a charge of not less than \$25 for each day of the company's default.

(File No. 37135)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

On the 25th day of September, 1908, an agreement in writing was entered into between His Majesty the King, hereinafter called the Government of the first part, and the Ottawa Electric Railway Company, hereinafter called the company of the second part, for the extension of the latter's car service from the terminus of Holland avenue to and upon the Central Experimental Farm situate in the southern part of the city of Ottawa. By this agreement the Government agreed to construct the double track electric railway line from the terminus of Holland avenue at the Farm property back of the Biological Laboratory and the poultry buildings to the mound near the stables, a distance of 1.20 miles. The actual construction was done by the company at a cost of \$39,899 but was paid for by the Government, and the line was put into operation in the year 1909.

By this agreement the company covenanted and agreed that upon and after the completion of the said line they would faithfully and continuously operate the same as though it were part of the company's system. In June, 1924, by permission of the Government, the company built a loop at the point on the line where it turns south from Carling avenue, opposite the Civic Hospital. The company operated the line in question until December 10, 1929, when they ceased to operate the portion of the line extending from the last-mentioned loop to the terminus of the line, a distance of 4,240 feet.

The Government now applies to this Board under section 35 of the Railway Act for an order directing the company to renew and continue the service so discontinued. Section 35 reads as follows:—

“Where it is complained by or on behalf of the Crown or any municipal or other corporation or any other person aggrieved, that the company has violated or committed a breach of an agreement between the complainant and the company—or by the company that any such corporation or person has violated or committed a breach of an agreement between the company and such corporation or person—for the provision, construction, reconstruction, alteration, installation, operation, use or maintenance by the company, or by such corporation or person, of the railway or of any line of railway intended to be operated in connection with or as part of the railway, or of any structure, appliance, equipment, works, renewals or repairs upon or in connection with the railway, the Board shall hear all matters relating to such alleged violation or breach, and shall make such order as to the Board may seem reasonable and expedient, and in such order may, in its discretion, direct the company, or such corporation or person, to do such things as are necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as constitute a violation or a breach thereof.”

This section, which was first introduced into the Railway Act in 1909 by C. 32, s. 1, 8-9 Edward VII, confers upon the Board jurisdiction to order specific performance of contracts of the character therein described. It requires the Board to hear all matters relating to such alleged violation or breach and to make such order as to the Board may seem *reasonable and expedient*. The question then for decision is whether or not upon the facts established in this case it can be said to be reasonable and expedient to make the order asked for.

It is admitted that the agreement here in question is of the character described in section 35, and it is further admitted that there has been a breach of the agreement. The company say, however, that under present conditions it is neither reasonable nor expedient that such an order should be made. They say that the service asked for, owing to the change in traffic conditions which has come about since the agreement was made, is not necessary for the purposes for which it was intended and that the furnishing of such service under present conditions would be a grievous burden on the finances of the company.

The Order in Council authorizing the making of the agreement shows the object the Government had in view in entering into this agreement. It recites—

“that on account of the great inconvenience to the general public desiring to visit the Government Experimental Farm, owing to its distance from the railway stations, it has been thought advisable and in the public interest to have the Ottawa Electric Railway extended thereto.”

At the time the agreement was made travel by motor car was practically unknown. To-day it is almost universal. Probably nine out of ten of those who visit the Government Experimental Farm now go by motor. Moreover, those who wish to go by tramcar can now reach the Farm by tram and the bus service furnished by the company which now runs along Carling avenue. The object which the Government had in view is at present fairly well attained by the service now being operated by the company and by the use of motor cars.

On the hearing the company filed a financial statement prepared by H. W. Steele, C.A., giving full details of the financial results of the operation of the line from the beginning until it ceased to operate in December, 1929. This statement shows that from the very first year loss was incurred. In 1909, the loss was over \$1,500. In the year 1920 the loss ran over \$18,000. During the twenty-one years of its operation the total loss was over \$238,000, or an average yearly loss of over \$11,000.

On the hearing before us counsel for the Government did not press for an order enforcing the agreement in its entirety. He said he would be satisfied if the company would divert the bus line that they now operate along Carling avenue in such a way as to take care of passengers visiting the Farm. The Board, however, has no jurisdiction to make such an order. Upon the facts established here it does not appear to me either reasonable or expedient that this Board should make the order asked for in the application.

The application will be dismissed.

OTTAWA, February 23, 1932.

Deputy Chief Commissioner Labelle and Commissioner Norris concurred.

ORDER No. 48178

In the matter of the complaint of the Deputy Minister of the Department of Justice on behalf of the Dominion Government against the Ottawa Electric Railway Company for a breach of a certain agreement between the Crown and the Company, dated September 25, 1908, for the operation of an electric tramcar service over the electric railway, on the Dominion Experimental Farm, Ottawa, and for an Order directing the company to renew and continue the service; and for the imposition of a charge of not less than \$25 for each day of the company's default.

File No. 37135

WEDNESDAY, the 24th day of February, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, February 17, 1932, in the presence of counsel for the complainant and the Ottawa Electric Railway Company; and considering the evidence submitted and filed,—

The Board orders: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Application of Provincial Oils, Ltd., Windsor, N.S., for a rehearing of their application for the same basis of rates on gasoline, carloads, out of Bridgewater, N.S., to all points in Nova Scotia as are in effect from Halifax, N.S., on the Canadian National Railways;

—and—

In the matter of the Order of the Board No. 47957, dated January 13, 1932, made upon the application of the McColl-Frontenac Oil Company, Ltd., Montreal, Que., suspending until further Order of the Board, that portion of Supplement No. 16 to Canadian National Railways Tariff C.R.C. No. E-1253, providing, effective January 14, 1932, for cancellation of commodity rates on petroleum and petroleum products, carloads, from Halifax, N.S.

File 37970

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

In application made to the Board in June, 1931, the Provincial Oils, Limited, stated that they were erecting storage tanks at Bridgewater, N.S., for the purpose of distributing gasoline from that point to various Nova Scotia points. It was stated that there were in effect commodity rates on gasoline, in carloads, from Halifax to various points in Nova Scotia which were lower than class

rates. Application made to the railway for a similar basis of rates from Bridgewater had been refused. This left the movement to depend upon the class rate. The application stated that at both points the gasoline was brought in by water from Canadian refineries and distributed to inland points by rail and in tank cars.

Negotiations took place but did not bring about an agreement, and the matter was set down for hearing in Halifax on December 3, 1931.

The railway stated that the commodity rates from Halifax to points on the former Intercolonial and Inverness Railways were originally established as distributing rates for shipments brought into Halifax from Upper Canada by rail and reshipped to Nova Scotia points. It was further stated that the rates on the former Halifax and Southwestern Railway were established to meet water competition, and that they are on an extremely low basis.

The railway admitted that conditions are now entirely changed in that it no longer receives an inward rail haul, the traffic all reaching Halifax by water. Further, it was admitted that since Bridgewater and other water points are also now receiving the same traffic by water and distributing to Nova Scotia points, no satisfactory justification for the difference in treatment or discrimination as alleged by the applicant could be given. Commodity rates are also in effect from Imperoyal (Dartmouth), at which point the Imperial Oil Company has a refinery, bringing in their crude oil by water. In distributing gasoline from Imperoyal, Halifax and Bridgewater, the shippers thereof are in active competition with each other.

At the hearing, the railway intimated that since it could not justify the difference in treatment, a tariff would be filed making operative the class rates. Counsel for the applicants indicated that he would have preferred to have the rates of his clients on a commodity basis, but at the same time recognized that what was proposed by the railway would remove the discrimination. Counsel for the railway stated he was "not authorized to say anything on behalf of Imperoyal, but my hope is that the rate will not be objectionable"; and the railway stated that due notice would be sent to all interested parties.

Complaint was received from the McColl-Frontenac Oil Company, Ltd., one of the shippers from Halifax, setting out that notification had not been given to them and requesting suspension of the supplement pending a full investigation. Thereafter, suspending order issued and the matter was set down for hearing at Ottawa. The Board notified the railway company; the Provincial Oils, Ltd.; the McColl-Frontenac Oil Co., Ltd.; the Imperial Oil Co., Ltd.; the Irving Oil Co., Ltd.; the Texaco Oil Co., Ltd.; and the Texas Company of Canada, Ltd. At the hearing, those represented were the Provincial Oils, Ltd., the McColl-Frontenac Oil Co., Ltd., and the railway.

As pointed out, the Imperial Oil Company, although notified of the hearing, was not represented. The commodity rates from Imperoyal appear to have been established because there is a refinery at that point and, also, because of the relation to the rates from Halifax. The McColl-Frontenac Oil Co., was represented by its Traffic Manager, who contended that commodity rates lower than the class rates were justified from Halifax, on the ground that that point was the logical distributing centre for the province of Nova Scotia.

On consideration, application of the class rates from Halifax, Imperoyal, and Bridgewater is justified. An unjustly discriminatory situation exists which should be removed. Order may go rescinding Board's Order No. 47957 of January 13, 1932.

There are certain rates published from Halifax and Imperoyal which are shown as competitive, and it is assumed that competition, where necessary, will be continued and the same consideration afforded to Bridgewater upon a showing of the same competitive conditions.

March 4, 1932.

Commissioner Norris concurred.

ORDER No. 48260

In the matter of the application of the Provincial Oils, Limited, of Windsor, Nova Scotia, for a rehearing of their application for the same basis of rates on gasoline, carloads, out of Bridgewater, Nova Scotia, to all points in Nova Scotia, as are in effect from Halifax on the Canadian National Railways;

And in the matter of the Order of the Board No. 47957, dated January 13, 1932, made upon the application of the McColl-Frontenac Oil Company, Limited, of Montreal, suspending, until further Order of the Board, that portion of Supplement No. 16 to Canadian National Railways tariff C.R.C. No. E-1253, providing, effective January 14, 1932, for cancellation of commodity rates on petroleum and petroleum products, carloads, from Halifax.

File No. 37970.

TUESDAY, the 8th day of March, A.D. 1932.

S. J. McLEAN, *Asst. Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 25, 1932, in the presence of counsel for and representatives of the Provincial Oils, Limited, the McColl-Frontenac Oil Company, Limited, the Town of Bridgewater, and the Canadian National Railways, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board Orders: That the said Order No. 47957, dated January 13, 1932, made herein, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 496

In the matter of the application of General Steel Wares, Limited, of Toronto, Ontario, for an Order amending the General Order of the Board No. 495, dated January 18, 1932, authorizing the use of certain barrels and drums for the transportation of explosives and other dangerous articles.

File No. 1717.38.2

WEDNESDAY, the 2nd day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that the metal container specifications prescribed in the said General Order No. 495 referred to the United States, or wine, gallon, and its being expedient that the same specifications should apply to metal containers of 5 imperial gallons capacity,—

The Board orders: That the said General Order No. 495, dated January 18, 1932, be, and the same is hereby, amended by adding the following clause at the end thereof, namely:—

“Whenever the said container specifications for metal barrels or drums refer to a marked capacity of 5 gallons, they shall be construed as applying to metal containers of 5 imperial gallons capacity.”

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48175

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 23rd day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 53 to Tariff C.R.C. No. E-1235.

Supplement 40 to Tariff C.R.C. No. E-1240.

Supplement 21 to Tariff C.R.C. No. E-1250.

Supplement 25 to Tariff C.R.C. No. E-1259.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 48199

In the matter of the Order of the Board No. 46625, dated May 12, 1931, as amended by Order No. 47452, dated October 1, 1931, fixing the period of coal movements during the years 1931 and 1932 from Alberta to Ontario points;

And in the matter of Order in Council P.C. 302, dated February 9, 1932.

File No. 27425.90

SATURDAY, the 27th day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that Order in Council P.C. 302, dated February 9, 1932, provides that the test movements of Alberta coals to Ontario points authorized by Order in Council P.C. 439, of March 16, 1928, as amended by Order in Council P.C. 2364 of December 3, 1929, and extended by Order in Council P.C. 1268 of June 5, 1930, terminating on March 15, 1932, be further extended for a period of one year,—

The Board orders: That, subject to the condition that if the grain movement this fall assumes normal proportions, the movement under the special coal rate will be suspended until after the close of navigation, the period of coal movements during the year 1932-33 be, and it is hereby, fixed to commence on the 31st day of July, 1932, and to end on March 15, 1933, both inclusive.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 48201

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 29th day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 54 to Tariff C.R.C. No. E-1235.
 Supplement 41 to Tariff C.R.C. No. E-1240.
 Supplement 13 to Tariff C.R.C. No. E-1241.
 Supplement 18 to Tariff C.R.C. No. E-1258.
 Supplement 5 to Tariff C.R.C. No. E-1689.
 Tariff C.R.C. No. E-1825½.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48202

In the matter of the application of the Express Traffic Association of Canada, for approval of proposed Supplement No. 15 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives, on file with the Board under file No. 1717.12.

MONDAY, the 29th day of February, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 15 to Tariff C.R.C. No. E.T. 694, covering Regulations and Specifications for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, and Samples of Explosives, filed by S. H. Bullett, Chairman of the Express Traffic Association, on file with the Board under file No. 1717.12, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48230

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariff C.R.C. No. 9, covering tolls to be charged for towing or towed vehicles, on file with the Board under file No. 35943.5.

FRIDAY, the 4th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' Tariff C.R.C. No. 9, covering tolls to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48259

In the matter of the Order of the Board No. 48199, dated February 27, 1932, fixing the period of coal movements during the years 1932 and 1933 from Alberta to Ontario points.

File No. 27425.90.

TUESDAY, the 8th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that Order in Council P.C. 302 extended the period of movements of Alberta coal to Ontario for a full year,—

The Board Orders: That the said Order No. 48199, dated February 27, 1932, be, and it is hereby, amended by striking out the words "31st day of July" in the operative portion thereof and substituting therefor the words "16th day of March."

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF DECEMBER, 1931

Railway accidents.. . . .	149, involving	9 persons killed and	155 injured
Railway accidents at highway crossings... 34, involving	8 persons killed and	48 injured	
	<u>183</u>	<u>17</u>	<u>203</u>

	Killed	Injured
Passengers.. . . .	..	24
Employees.. . . .	2	113
Others.. . . .	15	66
	<u>17</u>	<u>203</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

NOVA SCOTIA

No. of
Accidents

- 3 Automobile—N.S. Licences C-15-39; 41223; 61-774.

QUEBEC

- 3 Automobile—Auto driver failed to stop for crossing. Que. licences 11670; K-1058; 108538.
2 Automobile—Auto ran into side of train. Que. licences 23299; H-29017.
1 Automobile—Que. licence F-14114.

ONTARIO

- 6 Automobile—Auto ran into side of train. Ont. licences 30-3963; DY-365; K-1302; JS-22; JT-487; Que. 71986.
1 Automobile—Auto skidded through gates, struck side of train. Ont. licence S-3987.
1 Automobile—Ran through gates and stopped foul of track. Ont. licence OA-S55.
1 Automobile—Auto driver disregarded watchman's signal. Ont. licence R-13.
5 Automobile—Ontario licences, 31-331C; T-8880; Z-8250; 763; HL-74.
1 Pedestrian.

MANITOBA

- 1 Automobile—Driver unable to stop due to slippery condition of street. Man. licence 1918.
1 School Van—Horses bolted.
1 Sleigh.

SASKATCHEWAN

- 1 Automobile—Ran into side of train. Sask. licence 10-484.
1 Automobile—Sask. licence 45-624.
1 Horse-drawn vehicle.

ALBERTA

- 1 Automobile—Ran into side of train. Alta. licence 43534.

BRITISH COLUMBIA

- 1 Automobile—Ran into side of train. B.C. licence 62795.
2 Automobile—B.C. licences 12-735; 72-300.

Of the 34 accidents at highway crossings, 4 occurred at Protected crossings and 30 at Unprotected crossings. Thirteen (13) of the accidents occurred during the daylight hours and 21 at night.

OTTAWA, March 8, 1932.

THE BOARD
OF
RAILWAY COMMISSIONERS
FOR CANADA



RULES AND REGULATIONS

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1931

1

RULES AND REGULATIONS

MEETING AT OTTAWA

MONDAY, the 1st day of May, A.D. 1911.

The Board, in virtue of the provisions of the Railway Act, hereby make the following Rules and Regulations:—

INTERPRETATION

1. In the construction of these rules, and the forms herein referred to, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number; and the following terms shall (if not inconsistent with the context or subject) have the respective meanings hereinafter assigned to them; that is to say, "Application" shall include complaint under the Railway Act; "Respondent" shall mean the person or company who is called upon to answer to any application or complaint; "Affidavit" shall include affirmation; and "Costs" shall include fees, counsel fees, and expenses.

APPLICATION OR COMPLAINT

2. Every proceeding before the Board under the Railway Act shall be commenced by an application made to it, which shall be in writing and signed by the applicant or his solicitor; or in the case of a corporate body or company being the applicants shall be signed by their manager, secretary or solicitor. It shall contain a clear and concise statement of the facts, the grounds of application, the section of the Act under which the same is made, and the nature of the order applied for, or the relief or remedy to which the applicant claims to be entitled. It shall be divided into paragraphs, each of which, as nearly as possible, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively. It shall be endorsed with the name and address of the applicant, or if there be a solicitor acting for him in the matter, with the name and address of such solicitor. The application shall be according to the forms in schedule No. 1.

All applications or complaints regarding rates, fares, charges, regulations, or practices; and all exhibits filed in connection therewith, or quoted therein, must give specific reference by the appropriate C.R.C. number to the tariff authority therefor.

The application, so written and signed as aforesaid, shall be left with or mailed to the Secretary of the Board and copies thereof mailed or delivered to the parties affected, together with a copy of any document, or copies of any maps, plans, profiles, and books of reference, as required under the provisions of the Act, (a) referred to therein, or which may be useful in explaining or supporting the same. The Secretary shall number such applications according to the order in which they are received by him, and make a list thereof. From the said list there shall be made up a docket of cases for hearing which, as well as their order of entry on the docket, shall be settled by the Board. Said docket

NOTE.—*These Rules and Regulations have been amended in accordance with the Railway Act, 1919.

list when completed to be put upon a notice board provided for that purpose which shall be open for inspection at the office of the Secretary during office hours.

ANSWER

3. Unless the Board otherwise directs, the respondent or respondents shall mail or deliver to the applicant, or his solicitor, a written statement containing in a clear and concise form their answer to the application, and shall also leave or mail a copy thereof with or to the Secretary of the Board at its office, together with any documents that may be useful in explaining or supporting it. The answer may admit the whole or any part of the facts in the application. It shall be divided into paragraphs, which shall be numbered consecutively, and it shall be signed by the person making the same, or his solicitor. It shall be endorsed with the name and address of the respondents, or if there be a solicitor acting for them in the matter, with the name and address of such solicitor. It shall be according to the form in schedule No. 2.

All answers to applications or complaints regarding rates, fares, charges, regulations, or practices; and all exhibits filed in connection therewith, or quoted therein, must give specific reference by the appropriate C.R.C. number to the tariff authority therefor.

(a) The time limit for filing and delivery of answer shall be as follows: Where the subject matter of the complaint arises east of Port Arthur, Ont., fifteen days; between Port Arthur and the western boundary of the province of Saskatchewan, twenty days; and west thereof, thirty days.

REPLY

4. Within four days from the delivery of the answer to the application, the applicant shall mail or deliver a reply thereto to the respondents, and a copy thereof to the Secretary of the Board, and may object to the said answer as being insufficient, stating the grounds of such objection, or deny the facts stated therein, or may admit the whole or any part of said facts. The reply shall be signed by the applicant or his solicitor, and may be according to the form in schedule No. 3.

The Board may, at any time, require the whole or any part of the application, answer or reply, to be verified by affidavit, upon giving a notice to that effect to the party from whom the affidavit is required; and if such notice be not complied with the application, answer or reply may be set aside, or such part of it as is not verified according to the notice may be struck out.

SUSPENSION OF PROCEEDINGS

5. The Board may require further information, or particulars or documents from the parties, and may suspend all formal proceedings until satisfied in this respect.

If the Board, at any stage of the proceedings, think fit to direct inquiries to be made under any of the provisions of the Act, it shall give notice thereof to the parties interested, and may stay proceedings or any part of the proceedings thereon accordingly.

NOTICE

6. In all proceedings under the Act, where notice is required, a copy or copies of said proceeding, or proceedings, for the purpose of service, shall be

(a) For further particulars of plans, etc., see regulations regarding Plans and Specifications required to be filed with the Board.

endorsed with notice to the parties in the forms of endorsement set forth in schedules Nos. 1 and 2; and in default of appearance the Board may hear and determine the application *ex parte*.

Endorsements shall be signed in accordance with the provisions of Section 55 of the Railway Act.

The Board may enlarge or abridge the periods for putting in the answer or reply, and for hearing the application, and in that case the period shall be endorsed in the notice accordingly.

Except in any case where it is otherwise provided, ten days' notice of any application to the Board, or of any hearing of the Board, shall be sufficient; unless, in any case, the Board directs longer notice. The Board may, in any case, allow notice for any period less than ten days, which shall be sufficient notice as if given for ten days or longer. (Section 57 of the Railway Act.)

Notice may be given or served as provided by section 55 of the Act.

When the Board is authorized to hear an application or make an order, upon notice to the parties interested, it may, upon the ground of urgency, or for other reason appearing to the Board to be sufficient notwithstanding any want of or insufficiency in such notice, make the like order or decision in the matter as if due notice had been given to all parties; and such order or decision shall be as valid and take effect in all respects as if made on due notice; but any person entitled to notice, and not sufficiently notified may, at any time within ten days after becoming aware of such order or decision, or within such further time as the Board may allow, apply to the Board to vary, amend or rescind such order or decision; and the Board shall thereupon, on such notice to all parties interested as it may in its discretion think desirable, hear such application, and either amend, alter, or rescind such order or decision, or dismiss the application, as it may seem to it just and right. (Section 45 of the Railway Act.)

(a) Any party to any matter, application, or complaint pending before the Board may set the same down for hearing at the next monthly sitting of the Board, upon giving at least ten days', or such shorter notice as the Board may order, to all parties interested.

(b) When contested matters, applications, or complaints are ready for hearing, and are not at once set down by any party interested, the Secretary shall set the same down for the first sittings, commencing after the expiration of ten days (or such shorter notice as the Board may order) from the date of such setting down.

(c) When a matter, application, or complaint is set down for hearing by the Secretary, he shall give ten days' notice of hearing (or such shorter time as the Board may order) to all parties interested.

CONSENT CASES

7. In all cases the parties may, by consent in writing with the approval of the Board, dispense with the form of proceedings herein mentioned, or some portion thereof.

POWER TO DIRECT AND SETTLE ISSUES

8. If it appears to the Board at any time that the statements in the application, or answer, or reply do not sufficiently raise or disclose the issue of fact in dispute between the parties, it may direct them to prepare issues, and such issues shall, if the parties differ, be settled by the Board.

PRELIMINARY QUESTIONS OF LAW

9. If it appears to the Board at any time that there is a question of law which it would be convenient to have decided before further proceeding with the case, it may direct such question to be raised for its information, either by special case or in such other manner as it may deem expedient, and the Board may, pending such decision, order the whole or any portion of the proceedings before the Board, in such matter, to be stayed.

PRELIMINARY MEETING

10. If it appears to the Board at any time before the hearing of the application that it would be advantageous to hold a preliminary meeting for the purpose of fixing or altering the place of the hearing, determining the mode of conducting the inquiry, the admitting of certain facts or the proof of them by affidavit, or for any other purpose, the Board may hold such meeting upon such notice to the parties as it deems sufficient, and may thereupon make such orders as it may deem expedient.

PRELIMINARY EXAMINATION WITH THE PARTIES

11. The Board may, if it thinks fit, instead of holding the preliminary meeting, provided for in Rule 10, communicate with the parties direct, and may require answers to such inquiries as it may consider necessary.

PRODUCTION AND INSPECTION OF DOCUMENTS

12. Either party shall be entitled, at any time, before or at hearing of the case, to give notice in writing to the other party in whose application, or answer, or reply reference was made to any document, to produce it for the inspection of the party giving such notice, or his solicitor, and to permit him to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put in such documents in evidence on his behalf in said proceedings, unless he satisfy the Board that he had sufficient cause for not complying with such notice.

NOTICE TO PRODUCE

13. Either party may give to the other a notice in writing to produce such documents as relate to any matter in difference (specifying the said documents), and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

14. Either party may give the other party a notice in writing to admit any documents, saving all just exceptions, and in case of neglect to admit, after such notice, the cost of proving such documents shall be paid by the party so neglecting or refusing, whatever the result of the application may be; unless, on the hearing, the Board certifies that the refusal to admit was reasonable; and no costs of proving any document shall be allowed, unless such notice be given, except where the omission to give the notice is, in the opinion of the Board, a saving of expense.

WITNESSES

15. The attendance and examination of witnesses, the production and inspection of documents, shall be enforced in the same manner as is now enforced in a Superior Court of Law; and the proceedings for that purpose shall be in the same form, *mutatis mutandis*, and they shall be sealed by the Secretary

of the Board with the seal and may be served in any part of Canada. (Section 33 of the Railway Act.)

Witnesses shall be entitled, in the discretion of the Board, to be paid the fees and allowances prescribed by schedule No. 4 annexed hereto.

THE HEARING

16. The witnesses at the hearing shall be examined *viva voce*; but the Board may, at any time, for sufficient reason, order that any particular facts may be proved by affidavit, or that the affidavit of any witnesses may be read at the hearing on such conditions as it may think reasonable; or that any witnesses whose attendance ought, for some sufficient reason, to be dispensed with, be examined before a Commissioner appointed by it for that purpose, who shall have authority to administer oaths, and before whom all parties shall attend. The evidence taken before such Commissioner shall be confined to the subject-matter in question, and any objection to the admission of such evidence shall be noted by the Commissioner and dealt with by the Board at the hearing. Such notice of the time and place of examination as is prescribed in the order shall be given to the adverse party. All examinations taken in pursuance of any of the provisions of the Act, or of these rules, shall be returned to the Court; and the depositions certified under the hands of the person or persons taking the same may, without further proof, be used in evidence, saving all just exceptions. The Board may require further evidence to be given *viva voce* or by depositions, taken before a Commissioner or other person appointed by it for that purpose.

The Board may, in any case when deemed advisable, require written briefs to be submitted by the parties.

The hearing of the case, when once commenced, shall proceed, so far as in the judgment of the Board may be practicable, from day to day.

PUBLIC SESSIONS

17. For the hearing of matters, applications or complaints other than those relating to rates and traffic matters, a sitting will be held at the offices of the Board at Ottawa, Ontario, at 10 a.m., on the first Tuesday in every month, and for hearing all matters, applications and complaints relating to rates and traffic matters, a sitting will be held at the place and hour aforesaid on the third Tuesday in every month.

(a) In addition to its regular sittings, the Board may appoint special sittings at Ottawa and elsewhere.

JUDGMENT OF THE BOARD

18. After hearing the case the Board may dismiss the application, or make an order thereon in favour of the respondents, or reserve its decision, or (subject to the right of appeal in the Act mentioned), make such other order on the application as may be warranted by the evidence and may seem to it just.

The Board may give verbally or in writing the reasons for its decisions. A copy of the order made thereon shall be mailed or delivered to the respective parties. It shall not be necessary to hold a court merely for the purpose of giving decisions.

Any decision or order made by the Board under the Act, may be made an order of the Exchequer Court, or a rule, order, or decree of any Superior Court of any province of Canada, and shall be enforced in like manner as any rule, order, or decree of such court. To make such decision or order a rule, order or decree of such court, the usual practice and procedure of the court in such matters may be followed, or in lieu thereof the form prescribed in subsection 2, section 49, of the Act.

The Board shall with respect to all matters necessary or proper for the due exercise of its jurisdiction under the Act, or otherwise for carrying the Act into effect, have all such powers, rights and privileges as are vested in a Superior Court. (Section 33 of the Railway Act.)

ALTERATION OR RESCINDING OF ORDERS

19. Any application to the Board to review, rescind, or vary any decision or order made by it shall be made within thirty days after the said decision or order shall have been communicated to the parties, unless the Board think fit to enlarge the time for making such application, or otherwise orders.

APPEAL

20. If either party desires to appeal to the Supreme Court of Canada from the decision or order of the Board upon any question which, in the opinion of the Board, is a question of law, he shall give notice (c) thereof to the other party and to the Secretary, within fourteen days from the time when the decision or order appealed from was made, unless the Board allows further time, and shall in such notice state the grounds of the appeal. The granting of such leave shall be in the discretion of the Board.

For procedure upon such leave being obtained see section 52, subsection 5 *et seq.* of the Act.

An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction; but such appeal shall not lie unless the same is allowed by a judge of the said Court upon application and hearing the parties and the Board.

The costs of such application shall lie in the discretion of the judge.

INTERIM EX PARTE ORDERS

21. Whenever the special circumstances of any case seem to so require, the Board may make an Interim *ex parte* Order requiring or forbidding anything to be done which the Board would be empowered upon application, notice and hearing to authorize, require or forbid. No such Interim Order shall, however, be made for a longer time than the Board may deem necessary to enable the matter to be heard and determined. (Section 47 of the Railway Act.)

AFFIDAVITS

22. Affidavits of service according to the form No. 6 shall forthwith, after service, be filed with the Board in respect of all documents or notices required to be served under these rules; except when notice is given or served by the Secretary of the Board, in which case no affidavit of service shall be necessary.

All persons authorized to administer oaths to be used in any of the Superior Courts of any province, may take affidavits to be used on any application to the Board.

Affidavits used before the Board, or in any proceeding under the Act, shall be filed with the Secretary of the Board at its office.

Where affidavits are made as to belief, the grounds upon which the same are based must be set forth.

(c) For form of notice see Form No. 5 in the Schedule hereto.

COMPUTATION OF TIME

23. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the Act, or by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or a

day appointed for a public fast or thanksgiving in the Dominion or any of the provinces, in which case the time shall be reckoned exclusively of that day also.

ADJOURNMENT

24. The Board may, from time to time, adjourn any proceedings before it.

AMENDMENT

25. The Board may at any time allow any of the proceedings to be amended, or may order to be amended or struck out any matters which, in the opinion of the Board, may tend to prejudice, embarrass, or delay a fair hearing of the case upon its merits; and all such amendments shall be made as may, in the opinion of the Board, be necessary for the purpose of hearing and determining the real question in issue between the parties.

FORMAL OBJECTIONS

26. No proceedings under the Act shall be defeated or affected by any technical objections or any objections based upon defects in form merely.

PRACTICE OF EXCHEQUER COURT WHEN APPLICABLE

27. In any case not expressly provided for by the Act, or these rules, the general principles of practice in the Exchequer Court may be adopted and applied, at the discretion of the Board, to proceedings before it.

COSTS

28. The costs of and incidental to any proceedings before the Board shall be in the discretion of the Board, and may be fixed in any case at a sum certain, or may be taxed. The Board may order by whom and to whom the same are to be paid, and by whom the same are to be taxed and allowed.

Schedule No. 1

(FORMS OF APPLICATION)

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

Application No.

(This is to be filled in by the Secretary on receipt.)

A. B. of C. D. hereby applies to the Board for an Order under sections 272-273 of the Railway Act, directing the Railway Company to provide and construct a suitable farm crossing where the Company's railway intersects this farm in Lot Con. Tp.
County of , Ontario, and states—

1. That he is the owner of the land, etc.
2. That by reason of the construction of the said railway he is deprived, etc.
3. That it is necessary for the proper enjoyment of his said land, etc.

Dated this day of , A.D. .

(Signed A.B.)

Endorsements

The within application is made by A. B. of _____
(state address and occupation) or by C. D.
of _____, his solicitor.

Take notice that the within named Railway Company is required to file with the Board of Railway Commissioners within _____ days from the service hereof, its answer to the within application.

See subsection "a" of section 3 on page 4 as to length of notice.

FORM OF APPLICATION

(Where no Notice Required)

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

Application No.

The _____ Railway Company hereby applies to the Board for an Order under section 178 of the Railway Act, sanctioning the plans, profiles and books of reference submitted in triplicate herewith, showing a proposed deviation of its line of railway as already constructed between _____ and _____, mileage _____ to _____

Dated this _____ day of _____, A.D. 19 _____.

(Signed A. B.)

Schedule No. 2

(FORM OF ANSWER)

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

In the matter of the Application, No. _____ of
A. B. for an order under sections 272-273 of the Railway Act, directing
_____ Railway Company to provide a farm
crossing.

The said Company in answer to the said application states:—

1. That the said A. B. is not the owner but merely, etc.
2. That upon the acquisition of the right of way of the said Railway, A. B. was duly paid for and released, etc.
3. That the said A. B. has other safe and convenient means, etc.
4. That, etc.

Dated, etc.

Endorsements

The within answer is made by A. B. of _____
(state address and occupation)
or by C. D. of _____, his solicitor.

Take notice that the within named Applicant is required to file with the Board of Railway Commissioners within four days from the service hereof, his reply to the within answer.

Schedule No. 3

(REPLY)

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

In the matter of the application of A. B. against the Company.

The said A. B., in reply to the answer of the said Company, states that:—

1.

2. And the said A. B. admits that

Dated this day of , A.D. 19 .

(Signed Q.)

Schedule No. 4

(FEES AND ALLOWANCES TO WITNESSES)

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

To witnesses residing within three miles of the Court-room per diem (not including ferry and meals)..... \$1 00

Barristers, attorneys, and physicians, when called upon to give evidence in consequence of any professional services rendered by them, or to give professional opinion, per diem..... 5 00

Engineers, surveyors and architects, when called upon to give evidence of any professional services rendered by them, and to give evidence depending upon their skill and judgment, per diem..... 5 00

If the witnesses attend in one case only, they will be entitled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each case only.

When witnesses travel over three miles they shall be allowed expenses according to the sum reasonably and actually paid, which in no case shall exceed twenty cents per mile one way.

Schedule No. 5

(NOTICE OF APPEAL)

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

In the matter of the application No. of A. B., for an order under sections 272-273 of the Railway Act, authorizing the Railway, etc., etc.

To the Board of Railway Commissioners,
and

To

The above named Applicant (or Respondent, as the case may be).

Take notice that the Company will apply to the Board on the day of , (not exceeding 14 days from the date hereof), for leave to appeal to the Supreme Court of Canada from the Order of the Board, dated the day of , in the

matter of the above application authorizing the expropriation of certain lands referred to in said Order, and directing that compensation or damages to be awarded to the owners of said lands, or persons interested therein, shall be ascertained as and from the date of the application (or such other time as may be named in this Order).

The grounds of appeal are that as a matter of law, the awarding of such compensation or damages should be ascertained and determined from the date of the deposit of plan, profile, etc., as provided under sections 221-222 of the Act, and not from the time stated in the Order.

Dated

day of

Signed,

Solicitor, etc.

Schedule No. 6

(FORM OF AFFIDAVIT OF SERVICE)

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

In the matter of the application No. _____, of A. B., for
an Order under sections 272-273 of the Railway Act, directing
_____ Railway Company to provide a farm crossing.

I, _____, of the City of Ottawa, etc., make oath and say:—

1. That I am a member, etc.

2. That I did on _____ 19____ serve the (C.P.) Railway Company above named, with a true copy of the (application) of the said (A.B.) in this matter by delivering the same to (C.D.) the (Secretary) of the said Company, (or to E. F., the Ass't to the Gen. Mgr.) of the Company, being an adult person in the employ of the Company, at the head office of the Company in (Montreal), (see section 41 (a) of the Railway Act), which said copy was endorsed with the following notice, viz:—

(Copy exactly.)

Sworn, etc.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

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OF

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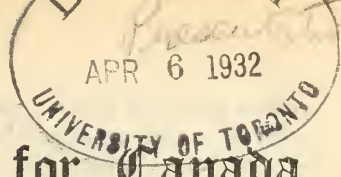
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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Gutta Percha and Rubber Limited, and the Dunlop Tire and Rubber Goods Company, Limited, Toronto, Ontario, re ratings applicable on carload shipments containing stationary conveyer and grain conveyer (rubber belting) from Toronto to Flin Flon, Man.

File No. 33365.90

Heard at Ottawa, February 16, 1932.

ORAL JUDGMENT

Delivered by the Chief Commissioner at the close of the hearing.

FULLERTON, CHIEF COMMISSIONER:

This case involves the question as to the proper rate to be applied to two carloads of merchandise shipped by the Gutta Percha and Rubber Limited, and the Dunlop Tire and Rubber Goods Company respectively. In the case of the Gutta Percha Company the carload was described as 24 bales rubber stationary conveyer. In the case of the Dunlop Company the contents of the car were described as 32 bales of grain conveyer. The carriers classed both as rubber belting, to which the fourth class rate applies. The applicants contend they are stationary conveyers and grain conveyers to which 5th and 6th class rates respectively apply.

The question in our minds comes down simply to this: Whether the articles in question can be called conveyers or whether they are only a portion of such conveyers. We see that the article when complete consists not only of this belt but of angle irons, braces, standards, idlers and various other things. I cannot see how it can be said that a portion only, one article in itself, can be called a conveyer. It is not a conveyer in itself, it could not convey anything, it has to have accompaniments in order to be useful as a conveyer.

The applicants have furnished the Board with samples of what they call transmission belting and what they call conveyers. I venture to say that if this article they call a conveyer were put before 99 people out of 100 who had never heard of this case, and they were asked what it was, they would tell you it was rubber belting. And indeed it is only the last year that these people who manufacture this thing that they now want to call a conveyer discovered that it is a conveyer and not rubber belting. I have pointed out where one of the appli-

cants here, the Dunlop people, in the Canada Trade Index advertise transmission, elevator and conveyer belting. The Goodyear Company advertise belting for transmission plants and conveyers. The Dominion Rubber Company advertise rubber belting, transmission and conveyer belting.

In the face of all this evidence it is impossible for this Board to hold that the article here in question is anything but rubber belting, and we hold that it should be rated as rubber belting.

Application of the Railway Trainmen and Employees of the Michigan Central Railway Company at Montrose Yards, Ont., for an Order directing that the Michigan Central Railway Company break up all their eastbound freight trains at Montrose Yards, Ont., and have them distributed from Montrose Yards to the various lines of railway at Niagara Falls, N.Y., over which these freight trains are routed; and that the system at present prevailing of grouping all these cars at Montrose Yards be continued in the future as in the past.

File No. 36800.1

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The application as launched by counsel for the Railway Trainmen and Employees sets out that a difference in method of operation had taken place subsequent to January 9, 1931; and it is stated that—

“Since the 9th of January, 1931, the system adopted by the Michigan Central Railway is that practically all the eastbound freight trains, instead of being stopped at Montrose Yards and broken up there and the cars distributed from there to their respective lines at Niagara Falls, N.Y., the freight trains are run through solid to Niagara Falls, N.Y., where they are broken up and distributed to their respective lines by New York Central crews. This system now adopted works a very great injury to the railway trainmen employed at Montrose and, in fact, is putting large numbers of them out of business entirely, destroying their means of livelihood and in many cases compelling them to give up their residences and go to some other part of the country and seek employment.

“The contention of the complainants is, that this is in direct violation of section 179 of the Railway Act. It is quite certain that if the railway company is allowed to run their eastbound freight trains through solid to Niagara Falls, N.Y., and to that extent do away with Montrose Yards as a terminal point, they will in the very near future terminate their system of grouping the freight cars at Montrose Yards, have the grouping all done at Niagara Falls, N.Y., by New York Central employees and run their solid trains from Niagara Falls, N.Y. through to their western point of destination, which will mean the closing up of the Montrose Yards as a terminal point, and the throwing out of employment of all railway men there engaged.”

In the presentation of this case, Montrose Yards are sometimes spoken of as a terminal and at other times as a divisional point.

Request was made that Order issue directing the Michigan Central Railway Company to break up all their eastbound freight trains at Montrose Yards and have them distributed as heretofore from Montrose Yards to the various lines of railway at Niagara Falls, N.Y., over which the cars are routed; and that the system of grouping or marshalling the cars at Montrose Yards, which prevailed prior to January 9, 1931, continue.

The answer of the railway company sets out, *inter alia*, that the application being filed under section 179 of the Railway Act, the onus is upon the applicants to prove that the railway is removing, closing, or abandoning the station or divi-

sional point, and that such action involves the removal of employees. The railways sets out that any changes made in the operation of the company's trains have not involved the removal of employees; that the number of man-hours worked at Montrose Yards in January, 1931, was very little less than in the month of December, 1930, and that any decrease in labour was due to the depression of business and not to any change in the operation of the company's trains; and that the car movements through the Montrose Yards in January, 1931, were only slightly less than in the preceding month.

The method of operation which is involved has had the effect of reducing the work on eastbound fast freight trains at Montrose and transferring to the New York Central staff at Suspension Bridge the work which had hitherto existed of delivering the cars to the Lehigh and Erie Railways respectively.

In the case of the movement of solid trains of freight destined to points in the United States, either for export or for domestic consumption, it happens that on various railways in the United States, as, for example, the New York Central, the Lehigh Valley, and the Erie, while these lines have interchanges at Niagara Falls, N.Y., they have no interchange in Canada. Under such circumstances, economical operation is facilitated by taking the trains through to Niagara Falls, N.Y., for breaking up.

At the hearing, it was set out that "a number of men" had been put out of employment, and it was suggested that this might be further continued until there would be a closing up of the yards. Mr. Genet, yard brakeman and conductor, was asked by his counsel regarding the effect of the new routing method of the cars. The following question was put to him (*Evid. Vol. 586, p. 2149*):—

"Q. The failure to distribute these cars routed by the New York Central, the Erie and the Lehigh Valley from the Montrose Yards, but taking them on through and distributing them at Suspension Bridge, New York; that is your contention?—A. Yes.

"Q. And the fact that they are doing that has thrown out of employment or caused to lose their employment a large number of the employees who lived in the vicinity of the Montrose Yards; is that correct?—A. I do not know how far you would go on a large number; it has thrown some employees out of work.

"The ASST. CHIEF: It would affect them for five days?—A. Yes." On the same page, the following discussion took place:—

"Q. My understanding was that the result of the rearrangements in the handling of cars affected five or ten men five days a week?—A. Yes, sir.

"Q. In their employment?—A. Yes.

"Q. What I do not understand about that statement is, how is it that there are not more than that many men thrown out?—A. In this respect, that the crew is doing the work.

"Q. What is complained of is that five or ten men have been affected five days a week?—A. In the present volume of business; but when business picks up, it will not require so many men as they did require.

"Q. That is what affects that number down to to-day?—A. Yes.

The same witness was cross-examined by counsel for the railway and the following discussion took place (*p. 2151*):—

"Q. You think that a certain number of men have lost their jobs?—A. Yes.

"Q. You mean that they have been dismissed or discharged by the railway company?—A. No.

"Q. They are still on call?—A. Yes.

"Q. When the occasion arises, if they are called up, they report for duty?—A. Yes.

"Q. So that they are not out of the employ of the railway?—A. They are out of employment during the existing agreement with the company; it is not necessary to lay off the men; they are automatically dropped off as the work does not demand their services.

"Q. But they have not been discharged from the Company's service?—A. Not discharged."

The same witness was re-called and re-cross-examined by Mr. Price, and at p. 2181 the following discussion took place:—

"Q. You are not suggesting that any of the employees have been removed from one place to another?—A. Only in the most drastic cases, removed from employment.

"Q. But they have not been taken off the calling list of the railway?—A. Not the call list, but they are off the active list.

"Q. They are still subject to call?—A. Yes, but they are off the active list."

The evidence adduced does not show that a divisional point is being closed or abandoned, involving the removal of employees. There are some changes in employment, but not even the strongest witness claimed that the abandonment of a divisional point had taken place.

The application was launched relying upon section 179. Counsel for the applicants invoked, in the course of the hearing, the provisions of section 35.

The reliance on section 35 was tied up to an agreement between the Canada Southern Railway and the Michigan Central Railroad, approved of and confirmed by an Act of the Parliament of Canada, 57-58 Vict. It was contended that under the agreement in question the Montrose Yard is the eastern terminal of the Canada Southern Railway; and that the Canada Southern Railway, if it were operating that line itself, would be bound, under its statutory rights and obligations, to operate it as a terminal, and that any freight cars that had to be sent to the Montrose Yards, routed by lines over the Suspension bridge, would necessarily have to be sent to the Montrose Yards by trainmen of the Canada Southern and by locomotives of the Canada Southern; and the Michigan Central, it is claimed, is bound to carry out the same arrangement.

Counsel stated that if the Michigan Central can ignore the Montrose Yards as a terminal for distribution of freight cars, they can put it aside as a terminal for all other purposes. They can run their trains right through solid to the Suspension Bridge, and Suspension Bridge would then be the terminal of the Canada Southern instead of Montrose.

Section 179 of the Railway Act reads as follows:—

"The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, or remove, close, or abandon any station, or divisional point or *create a new divisional point which would involve the removal of employees*, without leave of the Board; and *where any such change is made* the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby."

This was enacted by Chap. 44, 3-4 Geo. V, section 2, and was assented to on June 6, 1913. The words which are underlined were enacted in 1919, Chap. 68.

It does not appear to me that section 35 takes the matter any further than section 179. In fact, I do not think it goes as far. What is involved is, whether in respect of the matters raised the operation of a divisional point or terminal

is being carried on in compliance with the provisions and obligations of the Railway Act. Section 179, with its amendment, was passed with a view of safeguarding the interests of the employees. The wording of the section, therefore, means more than the wording which is concerned simply with general interests and does not refer to a specific class or group.

In *Brotherhood of Locomotive Trainmen et al vs. C.N.R. 38 Can. Ry Cas., 315*, it was found that the applicants therein had failed to bring themselves within section 179 of the Railway Act and the Board, therefore, had no jurisdiction to deal with the matter. I am of opinion that the same decision may go in the present case.

March 11, 1932.

Commissioner Norris concurred.

ORDER No. 48350

In the matter of the application of the railway trainmen and employees of the Michigan Central Railroad Company at Montrose Yards, Ontario, for an Order directing that the Michigan Central Railroad Company break up all its eastbound freight trains at Montrose Yards, and have them distributed from Montrose Yards to the various lines of railway at Niagara Falls, New York, over which these freight trains are routed; and that the system at present prevailing of grouping all these cars at Montrose Yards be continued in the future as in the past.

File No. 36800.1

MONDAY, the 21st day of March, A.D. 1932.

S. J. McLEAN, Assistant Chief Commissioner.

Hon. T. C. NORRIS, Commissioner.

Upon hearing the matter at the sittings of the Board held in Niagara Falls, June 16, 1931, in the presence of counsel for and representatives of the applicants, the Michigan Central Railroad Company, and the Council of the Township of Stanford, Geo. H. Pettit, K.C., M.P., also appearing, and what was alleged; and upon reading the further written submissions filed,—

The Board orders: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Corporation of the City of Brantford, Ont., for an Order directing the Canadian National Railways to construct a bridge for vehicular and pedestrian traffic across its right of way to replace the present bridge constructed in accordance with provisions of a certain agreement dated July 24, 1905, between the Grand Trunk Railway Company of Canada and the Corporation of the City of Brantford, Ont., at a point near the present level crossing of the Brantford and Paris Road.

File 34874.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The old main line of the Grand Trunk Railway which ran a short distance north of Brantford was relocated about 1905. Under this, an agreement was entered into between the city and the railway involving the construction of a subway, the closing of various streets, and an overhead bridge. The overhead bridge in question has a length of 160 feet and a width of 30 feet, consisting of a 6-foot sidewalk and a 24-foot roadway.

The present bridge was constructed in 1907. An agreement was entered into between the parties under date of July 24, 1905, which covers the matters referred to. Reliance is placed upon paragraph 4 of the agreement which reads as follows:—

“The company agrees, subject to the approval thereof of the Board of Railway Commissioners for Canada, to construct a bridge 26 feet in width between trusses, with a sidewalk, outside of trusses, for vehicular and pedestrian traffic across its right of way, at a point near the present level crossing of the Brantford and Paris road; but a sufficient distance westerly therefrom to give the necessary height required by the Railway Act of 1903; the design and specifications of said bridge to be approved by the Chief Engineer of the Board of Railway Commissioners.”

It is contended by the city that the existing structure is dangerous and, also, that it is inadequate and unsuitable. The city asks for a bridge 293 feet in length, the bridge proper being 140 feet in length and the balance consisting of approaches made up of earth fill. The proposed bridge is 38 feet 6 inches in width, 6 feet of this being for sidewalks and the balance for roadway.

There is a road parallel to the railway on each side and adjacent to the right of way. The existing bridge connects these two roads at right angles. The matter has been the subject of consideration by the Board's Chief Engineer, who advises that the only danger he can see at the point in question would be where a motorist might be driving rapidly along one of the roads parallel to the right of way and suddenly desire to cross the bridge. The engineer admits that if this were to happen, the motorist might find difficulty in making the turn and go through the railing. He thinks, however, that this is rather remote.

It is proposed to build the new bridge so that a motorist going to the city from the north side of the track and desiring to cross to the south side will have to make a turn of only 40 degrees instead of 90 degrees. On the other hand, if a motorist were going in on the south road and desired to go to the north side and continue into the city, he would have to make two sharp turns.

In the correspondence which has taken place, the Department of Public Highways of the Province of Ontario expressed its willingness to extend financial aid in connection with the construction of the new bridge. It set out that after contributions from the Grade Crossing Fund and the railway company had been applied, the balance of cost should be divided between the city of Brantford and the province; and in a letter of October 23, 1931, the deputy minister of the department set out that “On any other basis of distribution, we would request that the department be relieved of any portion of the expenditure made.”

So far as the plans of the proposed new bridge are concerned, there is agreement between the railway and the municipality. The railway agrees as to the detail of the bridge, not as to its construction. The preliminary estimate of cost as submitted by the railway is \$53,650.

The railway stated its willingness to maintain the existing bridge or to contribute towards the cost of the proposed new structure a sum of \$10,450, which is the cost of reconstructing the present bridge in kind. This offer was contained in letter of May 21, 1931, which stated at the same time that it would be impossible for the railway to provide this sum during the year 1931. Letter of October 8, 1931, sets out as follows:—

“In view of the present financial situation and the fact the traffic has fallen off to a very considerable extent, our officials are of opinion that nothing should be done with this structure until 1933, and if conditions improve we will then be willing to make a contribution of \$10,450 towards the cost of this work.”

There are two phases of the matter: (1) the question of a new work; (2) the question of maintenance of existing structure.

The city takes the position that, under the agreement, subject to contribution from the Grade Crossing Fund, the balance of cost, so far as any alleged obligation of the city is concerned, should be borne by the railway. It is not necessary at the present juncture to go into the question of whether the Grade Crossing Fund applies. The Department of Highways has pointed out that its contribution is contingent upon contribution by the city of Brantford, the Grade Crossing Fund, and the railway.

It may as well be frankly recognized that the situation in which the revenues of the Canadian National Railways stand do not justify direction being given for a contribution to the new structure on the basis for which the city of Brantford asks. In addition, even if the provisions of the Grade Crossing Fund are applicable in connection with the state of facts concerned, the commitments of that fund are such that no money is available in aid of the present application.

In connection with maintenance, the railway recognizes its obligation, under the agreement. In letter of January 28, 1931, Mr. J. P. Pratt, regional counsel for the railway, stated:—

“ . . . recognize that under the agreement between the company and the city we undertook to maintain a bridge over our tracks in the location accepted at that time by the city and approved by the Engineer of the Board of Railway Commissioners. If the city now considers that this bridge should be placed at a different angle to make it more convenient for automobile traffic, we consider that the city should bear the expense thereof. We are prepared to carry out our undertaking in the agreement and to maintain the present bridge in a condition safe for highway traffic or to construct it when that becomes necessary.”

As to the question of danger which is raised, this has been given due consideration by the Board's Chief Engineer. The Board was advised by its Engineering Department that the existing bridge is capable of carrying loads at present permitted under the Highway Traffic Act of the Province of Ontario, viz., 12 tons on 4 wheels or 15 tons on 6 wheels. It, therefore, appears that the existing bridge is quite strong enough to carry the loads allowed on the King's highway.

With the existing conditions, it would be a futile exercise to attempt to determine the obligations of the railway under the agreement. No doubt, the new bridge asked for would afford additional convenience. The Board is advised that the existing bridge is safe. The railway carries the burden of maintenance.

Under existing conditions, therefore, the contributions asked for not being justified by the financial resources available, order for the new bridge asked for will not go.

MARCH 12, 1932.

Commissioner Stoneman concurred.

ORDER No. 48347

In the matter of the application of the Corporation of the City of Brantford, Ontario, hereinafter called the "Applicant," for an Order directing the Canadian National Railways to construct a bridge for vehicular and pedestrian traffic across their right of way to replace the present bridge constructed in accordance with the provisions of a certain agreement dated 24th July, 1905, between the Grand Trunk Railway Company of Canada and the Corporation of the City of Brantford, at a point near the present level crossing of the Brantford and Paris Road:

File No. 34874.

MONDAY, the 21st day of March, A.D. 1932.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Brantford, March 27, 1931, in the presence of counsel for the applicant and the Canadian National Railways, and what was alleged; upon reading the further written submissions filed; and upon the report and recommendation of its Chief Engineer.

The Board Orders: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48293

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 11th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 4 to Tariff C.R.C. No. E-1245.

Supplement 13 to Tariff C.R.C. No. E-1504.

Supplement 6 to Tariff C.R.C. No. E-1702.

Supplement 2 to Tariff C.R.C. No. E-1737.

Tariff C.R.C. No. E-1289.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48304

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its connection from mileage 0·22 Rosetown-Perdue Branch to mileage 0·25 Rosetown Southeasterly Branch, a distance of 1,570 feet.

File No. 29384.28

MONDAY, the 14th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its connection from mileage 0·22 Rosetown-Perdue Branch to mileage 0·25 Rosetown Southeasterly Branch.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 48307

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 14th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 51 of Supplement No. 12 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 51 of Supplement No. 12 to Tariff C.R.C. No. 851, approved herein, is 12½ cents per 100 pounds.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 48308

*In the matter of tariffs, and supplements to tariffs, filed under the provisions
of the Maritime Freight Rates Act*

File No. 34822.13

MONDAY, the 14th day of March, A.D. 1932

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 263 of Supplement No. 26 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under Section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 263 of Supplement No. 26 to Tariff C.R.C. No. 856, approved herein, is 14 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48309

*In the matter of tariffs, and supplements to tariffs, filed under the provisions
of the Maritime Freight Rates Act*

File No. 34822.13

MONDAY, the 14th day of March, A.D. 1932

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Windsor, Nova Scotia, to Halifax, Nova Scotia, in item 240-B of Supplement No. 28 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 240-B of Supplement No. 28 to Tariff C.R.C. No. 856, approved herein, is 10 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48320

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

TUESDAY, the 15th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board Orders:

1. That the toll published in item 8 of Supplement No. 15 to Tariff C.R.C. No. 815, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 8 of Supplement No. 15 to Tariff C.R.C. No. 815, approved herein, is 10 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48345

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

SATURDAY, the 19th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in Tariff C.R.C. No. E-1833, and in Supplement 19 to Tariff C.R.C. No. E-1247, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48348

In the matter of the application of S. H. Bullett, Chairman of the Express Traffic Association of Canada, for approval of Express Classification for Canada No. 8, on file with the Board under file No. 4397.111.

SATURDAY, the 19th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the proposed Express Classification for Canada No. 8 is a reissue of Classification No. 7 and supplements thereto, and includes supplements "Q" and "R" approved by Order No. 48160, dated February 18, 1932,—

The Board orders: That the said Express Classification for Canada No. 8, proof of which is now on file with the Board under file No. 4397.111, be, and the same is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 2

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of other Vehicles, and Pedestrians at Protected Highway Crossings

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from November 1, 1931, to February 29, 1932, show thirty-six cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from July 1, 1931, to December 31, 1931, and (Eastern Lines) from November 1, 1931, to January 31, 1932, show a total of one hundred cases.

The Toronto, Hamilton and Buffalo lines show one case on December 23, 1931.

The Essex Terminal Railway lines show one case on January 15, 1932.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deprecates this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Nov. 3....	15.30 K....	Provencher Ave., St. Boniface, Man.	T-103-372.....	Collided with Ex-3568, caboose hop.
" 5....	20.47 K....	Provencher Ave., St. Boniface, Man.	T-002-341.....	Collided with Tr in No. 5, disregarding automatic flagman.
" 11....	11.30 a.m....	Cambridge St., Winnipeg, Man.	61761.....	Collided with cars being shoved over crossing.
Dec. 1....	12.01 K....	Academy Road, Winnipeg, Man.	1918.....	Collided with engine.
" 8....	3.15 a.m....	Laurier Ave., Levis, Que.	.....	Ran through gate while attempting to catch ferry boat.
" 10....	14.10.....	Public crossing west of Viking west switch, Viking, Alta.	Alta. 69-912....	Auto ran into side of train damaging radiator and lights on front of auto.
" 11....	4.30 p.m....	Bout de l'Isle, M.P. 24-6 L'Assomption Sub-Division.	Que. K-1058....	Drove truck ahead of train without making stop as required by law.
" 15....	1.05 p.m....	Ontario St., Port Hope, Ont.	Ont. 2304-T....	Was parked too close to track. No. 92 had to stop till truck got clear.
" 16....	21.15.....	97th St., Calder Yard.	Alta. 63-355....	String of cars being pulled over crossing by yard engine, auto ran into side of caboose.
" 17....	6.40.....	96th St., Edmonton, Alta.	Alta. GT-9243..	Driving over crossing at high speed ran into tender of yard engine. Slight damage to truck.
" 22....	22.20.....	82nd St., Edmonton, Alta.	Alta. 48-015....	Auto drove up on crossing and was struck, damaging same.
" 24....	10.06.....	Lindsay St., Drummondville, Que.	81844.....	Ran through south gate while both gates were down for passenger extra 5055.
" 26....	6.00 p.m....	Charlotte St., Peterboro, Ont.	C.M. 939.....	Driver approached crossing in a careless manner, roads in bad condition.
" 26....	13.10 K....	102nd Ave., Edmonton, Alta.	Alta. BT-4-622-	Auto ran into yard engine on account of slippery roads; slight damage to truck.
" 27....	1.30 p.m....	Second Public Crossing south of Falkenburg, Ont.	JR-546.....	Auto ran into engine; auto damaged but none of the 7 occupants injured. Proper crossing signals given by engineer.
" 29....	.....	East of Coal Dock at Hope, B.C.	47219.....	Hurrying across crossing just ahead of train. Very close call.
" * 30....	1.25 p.m....	Norfolk St., Simcoe, Ont.	NJ-171.....	Ran by watchman's stop signal in front of train.
" 31....	11.10 K....	Lulu Island Road, No. 6.	B.C. 92436.....	Crossed track immediately in front of moving train.
" 31....	21.40 K....	96th Street Crossing, Edmonton, Alta.	Alta. 55-724....	Auto ran into side of car on account of slippery roads, causing damage to auto.
Jan. 8....	10.40.....	Ave. "H" Crossing, Saskatoon, Sask.	Sask. 9993.....	Travelling at excessive rate of speed, resulting in skidding a considerable distance into side of train.
" 21....	4.38 p.m....	1st public crossing east of Lalonde, Que., L'Original sub-div.	Que. H-32177...	Driver attempted to drive auto over crossing ahead of train. Engine struck auto killing one occupant instantly and the other occupant died on train.
" 23....	11.45 a.m....	2nd public road crossing north Stayner, Ont.	C-1076.....	Failed to hear or see train coming until too close to crossing; brakes applied but skidded on icy roadway and collided with engine.
" 29....	6.45 K....	96th Street Crossing, Edmonton, Alta.	Alta. C-9-895...	Truck stopped too close to crossing; engine struck truck pulling bumper off.
" 29....	15 K.....	1st public crossing south of Brooksby, Sask.	.....	Team driven over crossing without driver first looking for approaching train.
" 30....	16.50 K....	95th Street Crossing, Edmonton, Alta.	C.T. 9544.....	Ran into crossing gate, breaking same.
" 30....	1.37 K....	97th Street Crossing, Calder Yard, Edmonton, Alta.	Alta. 60219....	Auto travelling too fast, ran into side of caboose.
Feb. 1....	10.25 a.m....	Essa St., Allandale, Ont.	KD-375.....	Warning bell had been sounded and gates were lowered when this truck ran through gates, breaking end off same.

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Feb. 2....	.....	Kingston Road, east, Cobourg, Ont.	Ont. MU-947...	Misjudged distance and applied brakes on slippery pavement.
" 2....	19.50 K....	95th Street Crossing, Edmonton, Alta.	Alta. 62362....	Ran into crossing gate, breaking same.
" 4....	11.15 K....	95th Street Crossing, Edmonton, Alta.	CT-9165.....	Ran into crossing gate, breaking same.
" 6....	22.11 K....	115th Avenue., and 80th Street, Edmon- ton, Alta.	Alta. 59058....	Tried to cross track ahead of train and had to run car onto sidewalk to avoid being struck by train.
*" 9....	12.05 a.m...	Canning St., Montreal, Que.	Que. 25851.....	Driver intoxicated; ignored warning signals.
" 12....	1.48 a.m...	2nd public crossing south of St. Jerome, Que., on Montreal- St. Jerome highway near Papineau, Que.	Que. H-14724...	Ran into side of train standing on crossing. Apparently did not stop before approaching track.
" 22....	8.10 p.m...	1st public crossing south of Allandale on Milton Subd., over Highway No. 11.	KD-334.....	Auto driver did not see train until too close, and when he applied brakes auto skidded, striking caboose.
" 26....	7.08 p.m...	Front St., Orillia, Ont.	JZ-929.....	Driver of auto ignored signals, and approached crossing at high rate of speed. Crashed through gates and was struck by box car.
" 27....	5.20 p.m...	Laframboise St. Crossing, St. Hya- cinthe, Que.	Que. 43201.....	Ignored warning signals and crossed tracks at rate of about 20 miles per hour in front of approaching train.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)

MANITOBA DISTRICT

Date	Time	Crossing	Auto No.	Remarks
Nov. 19, 1931	11.20 K...	Montcalm St., Winni- peg.	.....	Automobile proceeding South ran into crossing protection gate.

SASKATCHEWAN DISTRICT

Oct. 3....	15.25 K...	Broadway Crossing, Yorkton.	55-057	Crossed over track against stop signal just ahead of Engine 1034.
" 6....	15.00 K...	" "	55-034	Crossed over track against stop signal just ahead of Engine 970.
" 25....	10.00 K...	" "	10-643	Crossed over track against stop signal just ahead of Engine 970.
Nov. 4....	9.00 K...	" "	6-256	Crossed over track against stop signal.
" 21....	16.00 K...	" "	22-555	Crossed over track against stop signal when Engine 2078 was backing out of elevator track. Engine had to stop.
Dec. 7....	8.25 K...	" "	24-561	Crossed over track against stop signal ahead of Engine 2315.
" 16....	15.15 K...	" "	22-414	Crossed over track against stop signal just ahead of Engine 2731.

ALBERTA DISTRICT

Oct. 30....	8.30 K...	2nd Street, Medicine Hat.	.....	Auto struck and broke gate.
Nov. 11....	9.40 K...	4th Street West, Cal- gary.	3549	Ran into west centre gate, breaking same.
" 21....	14.00 K...	" "	.....	Ran into northwest gate, breaking gate.
Dec. 6....	6.15 K...	" "	15660	Ran into northeast gate, breaking gate.
" 10....	18.30 K...	" "	78349	Ran into southeast gate, breaking gate.
" 10....	20.30 K...	Allowance Ave., Med- icine Hat.	19-984	Car driven by J. N. Caynne, struck and broke gates.
" 24....	13.30 K...	2nd Street, Medicine Hat.	289	Bus owned by Gas City Bus Co. ran into west gate.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—Continued

BRITISH COLUMBIA DISTRICT

Date	Time	Crossing	Auto No.	Remarks
Oct. 26....	19.30 K..	North Vancouver Ferry.	B.C. 105-931....	Auto dashed under north gate as it was being lowered and had to crowd against south gate to let train go by.
Oct. 1 to Dec. 31.	.....	Powell St., Vancouver	.....	Autos ignore watchman's stop sign.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS, MANITOBA DISTRICT, WHERE NO PERSONAL INJURY IS INVOLVED

Division	Date	Location	Particulars
<i>Fort William Terminals.</i>	Nov. 18.	Pacific Ave., Fort William.	Yard engine 6166 struck Ford auto which had stalled on crossing. Crew observed car and slowed down causing very little damage to car.
<i>Kenora.....</i>	Sept. 13.	Minnitaki, M.P. 75-25, Ignace Subdivision.	Ford truck, licence No. 67451-C, owned by Mr. Millings, Eagle River, being driven by Abe Dunlop, accompanied by Joe Lafrnier, both of Eagle River, stalled on crossing and was struck by train Extra East 5349 in charge of Conductor C. R. Simpson and Engineer F. Berry. Truck was completely demolished. Estimated loss \$300. No damage to equipment of this Company or to track.
	Sept. 27.	Dryden, M.P. 621-2, Ignace Subdivision.	Track motor being operated by Lineman R. Foote was struck by automobile owned and driven by Mr. W. D. Neely of Dryden. Damage to track motor, fly wheel broken and rear axle and housing bent. Damage to automobile, bumpers bent.
<i>Winnipeg Terminals....</i>	July 4.	Princess St., Winnipeg, Man.	At 5.40 K as yard engine 6292 was coming out of Princess St., proceeding North, Chevrolet coach, Manitoba licence D-382, operated by H. Legich, ran into tender of engine as the engine passed the lane between Ross Ave. and Elgin Ave. No damage to engine. Left fender of car was smashed. Engine bell was ringing at time of incident. Visibility poor due to rain.
	Sept. 30.	Stadacona St., Winnipeg, Man.	At 18.50 K, engine 6267 was pushing cars about two miles per hour over Stadacona Street crossing at Talbot Ave. when Chevrolet auto, licence 159105, driven by the owner, F. H. Sedman, was struck by cars, doing slight damage to auto. Two yardmen were on point car with lanterns lighted, and engine bell ringing.
<i>Portage.....</i>	Oct. 17.	M.P. 75, Winnipeg Beach Subdivision, Burrows Ave., Winnipeg.	Track motor operated by bridgeman struck Ford truck on crossing.
	Nov. 2.	Mileage 71, Carberry Subdivision.	Truck ran into side of engine on train No. 3. Truck badly damaged.
	Nov. 6.	Mileage 89-9, Napinka Subdivision Broadway St., Deloraine.	Chevrolet sedan struck by car on crossing while switching.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Continued*

SASKATCHEWAN DISTRICT

REGINA DIVISION

Date	Location	Particulars
Nov. 5.....	3rd Street Crossing, Weyburn Yard...	Gas Electric Car Number 48, struck truck, Sask. licence UT-432.

MOOSE JAW DIVISION

Oct. 22.....	Rockglen (Fife Lake Subdivision)....	Train No. 432 was backing up during switching operations, and when approaching crossing just north of station, the steps of caboose struck bumper of Buick automobile driven by C. H. Haenel of Rockglen. No damage to caboose or auto.
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SASKATOON DIVISION

Nov. 6.....	Jansen (Mileage 23.6).....	Driver of auto failed to observe Train 2/978 which was backing down main line, and struck side of van.
Nov. 26.....	Saskatoon Yard.....	Driver of auto failed to observe yard engine 3256 backing out of old Case spur with three cars ahead of engine and struck right rear footboard and step on tender.
Dec. 22.....	Castlewood (Mileage 64).....	When crossing track at private crossing with sleigh, same stuck on south rail and driver being unable to cross, backed front of sleigh off track and unhitched team, but left pole across rails. Engineer of Train No. 80 seeing team being unhitched, applied emergency brake, but was unable to avoid striking sleigh pole.

ALBERTA DISTRICT

LETHBRIDGE DIVISION

July 11.....	M. 43.8 Macleod Subdivision.....	Train No. 541 struck Ford truck, licence T. 16-503, driven by Mr. Etof Nelson. Driver failed to observe train approaching.
Sept. 11.....	M. 26 Macleod Subdivision.....	Train No. 541 struck International truck, licence BT. 4-343, driven by Mr. A. Sandeman. Driver failed to observe train approaching.
Oct. 11.....	M. 61.8 Macleod Subdivision.....	Train No. 96. Ford truck licence T. 79-139 (Calif.) driven by Mr. J. Vallier, ran into side of train. Driver failed to observe train moving over crossing.
Oct. 12.....	Granum. Macleod Subdivision.....	Train Extra 969 North struck Pontiac Coupe, licence 50-009, driven by Mr. R. Henker. Driver attempted to cross track ahead of cars being pushed.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Concluded*ALBERTA DISTRICT—*Concluded*

CALGARY DIVISION

Date	Location	Particulars
Oct. 9.....	M. 4-9, Red Deer Subdivision.....	Roosevelt Sedan, licence 12947, driven by Miss G. A. Jussila, ran into side of engine 2649, train No. 524. Driver failed to observe train approaching.
Nov. 10.....	Alberta St., Innisfail Red Deer Sub-division.	Chevrolet truck, licence 15025, driven by Mr. J. Schaefer, ran into side of water car, train No. 82. Driver attempted to cross track ahead of cars being pushed.

EDMONTON DIVISION

Oct. 22.....	Lacombe, Leduc Subdivision.....	Train No. 85, engine 5148, struck Chevrolet Touring car, licence 49-370, driven by Mr. W. T. Puffer. Driver failed to take sufficient precaution before crossing track.
Nov. 22.....	Wetaskiwin, Leduc Subdivision.....	Train No. 96, engine 5144, struck touring car, licence 26-117, driven by Mr. C. Smith. Driver failed to stop auto clear of track.

BRITISH COLUMBIA DISTRICT

VANCOUVER DIVISION

July 21.....	Hammond-Lorne St. Crossing.....	Auto BC-59-866 stalled on crossing and struck by train No. 3. Slight damage to auto.
Nov. 8.....	Vancouver-Pender St.....	Auto BC-83-739 stopped just foul of track almost immediately in front of engine. Very slight damage to auto.
Nov. 9.....	Vancouver—Mile 127-70.....	Auto truck BC-107-952 struck by string of cars being shoved over crossing.

KOOTENAY DIVISION

Nov. 20.....	Mile 6 Rossland Subdivision.....	Auto truck BC-40-012 attempted to cross track ahead of train 81. Engine struck rear end of truck turning it around, but doing very little damage.
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CANADIAN PACIFIC RAILWAY (EASTERN LINES)

NEW BRUNSWICK DISTRICT

Date	Time	Crossing	Auto No.	Dangerous Practice
Nov. 19....	7.05 p.m....	Douglas Ave., Saint John.	.....	Auto dashed under gates while they were being lowered for No. 39.
" 27.....	" "	Two autos raced over crossing at high rate of speed.
Dec. 4.....	" "	T-7178.....	Auto in order to clear gates, which were being lowered, ran over sidewalk and into rocks at side of road, badly damaging car.
" 14.....	" "	Two autos dashed under gates while they were being lowered for No. 102.
" 25.....	" "	Auto dashed over crossing in front of No. 103, refusing to stop when ordered by police. Driver of car apparently under influence of liquor.
" 25.....	" "	7849.....	Auto stalled on track in front of No. 39 at 7.10 p.m.
Jan. 19.....	" "	J-9702.....	Auto turned on crossing.
" 23.....	" "	Auto dashed under gates while same were being lowered for freight train.
Nov. 5.....	Fairville, Saint John..	C-1540.....	Truck ran through and broke west gates.
" 23.....	" "	J-7176.....	Auto drove under east gate as it was being lowered and drove through west gate. Bell was ringing.
Dec. 1.....	" "	J-6663.....	Auto drove under east gate as it was lowering.
" 19.....	" "	T-7836.....	Auto dashed under gates as they were being lowered.
" 20.....	" "	J-7253.....	Auto skidded into east gate, breaking tip.
" 25.....	" "	T-6408.....	Auto broke gate and casting west side crossing.
Jan. 24.....	" "	J-6972.....	Auto drove by watchman while he was in the act of flagging crossing for approaching train.

QUEBEC DISTRICT

Nov. 3.....	.....	College St., Lennoxville.	F-11553 Que....	Ford truck struck and broke gate at street crossing.
" 21.....	.....	Bridge St., Quebec...	M-127.....	Motorcycle approaching crossing, travelling North, struck gates.
" 29.....	.....	St. Valier St., Quebec.	128878-Que....	Gates had all been lowered when auto, approaching at medium speed, could not stop owing to slippery pavement and struck and broke gate No. 4, about 3 feet from end.
Dec. 12.....	.....	Crown St., Quebec....	13088-Que....	South side gates had been lowered when auto, approaching from North, failed to see gates were down and drove over crossing, breaking southwest gate.
" 16.....	.....	" "	A-303-Que....	North side gates had been lowered for an outgoing train and gateman was preparing to lower south side when autobus went over crossing and struck and broke gate.
" 17.....	.....	Bridge St., Quebec...	5-358-Que....	Gates had been lowered when auto-taxi coming from North struck and broke gate.
" 19.....	.....	Chelsea Road, Hull West.	.....	Auto skidded on ice and rear end swung on to northwest gate, breaking same off at casting and damaging signal lamp.
Jan. 2.....	.....	Crown St., Quebec....	.....	Car appeared from South travelling at speed of 25 to 30 miles per hour and broke southeast gate, ran over crossing and broke northeast gate.
" 4.....	.....	St. Valier St., Quebec.	14003-Que....	Gateman had lowered gates for C.N.R. train No. 44 when auto struck and broke southwest gate No. 1.
" 14.....	.....	Crown St., Quebec....	.....	South side gate arms were being lowered when car appeared from South, travelling at speed of 25 miles per hour, did not stop and broke tip off southeast gate.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—Continued

QUEBEC DISTRICT—Concluded

Date	Time	Crossing	Auto No.	Dangerous Practice
Jan. 19....		Crown St., Quebec....	T-1583-Que....	Southeast gate was struck and broken. Auto was 300 feet from crossing when gate was lowered.
" 24....		" "		Gateman had lifted north side gate and was in act of lifting those on south side when automobile, which had been standing on north side, moved over crossing and struck and broke southwest gate.
" 25....		Bridge St., Quebec....	128295-Que....	Gateman started to lower gates for engine backing from shop, when auto came from south side and started speeding up to pass over crossing before gates on south side were completely down, resulting in car being struck by rod supporting southeast gate when it was in lowered position and caused two holes in car top.

ONTARIO DISTRICT

Nov. 2....	4.35 p.m...	Waterloo St., London.	V. 81.....	Auto made no attempt to stop when bell ringing and gates being lowered and came very near crashing into gate.
" 9....	2.40 p.m...	Adelaide St., London.	U-6495.....	Auto disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 10....	1.07 a.m...	Dundas St., Cooks-ville.	529-95-C.....	Truck stopped for light engine to pass, but stopped too close to rail and right cylinder of locomotive struck left front wheel of truck, damaging same.
" 10....	7.05 p.m...	Norwich St., Guelph.	FD. 916.....	Auto driven by a young Chinaman failed to hear whistle signals or observe approach of train, and drove into side of leading car.
" 11....	6.00 p.m...	Stone Road, Galt....	T-2751.....	Auto disregarded watchman's stop sign and crossed tracks ahead of express train.
" 21....	11.22 a.m...	Adelaide St., London.	W-3995.....	Auto disregarded watchman's stop sign and crossed tracks in front of passenger train.
" 21....	3.20 p.m...	Centre St., Chatham.	W-7274.....	Driver of auto failed to observe crossing gate down and ran into north gate arm, breaking it.
" 22....	7.35 p.m...	Richmond St., London	D. 264.....	Auto failed to stop in time and crashed into southeast gate arm, breaking it off.
" 22....	11.55 a.m...	Quebec St., London...	U. 8725.....	Auto disregarded watchman's stop sign and crossed tracks in front of passenger train.
" 25....	6.05 p.m...	Richmond St., London	FL. 665.....	Auto drove past standing cars and crashed through southeast and northwest gate arms, breaking them. He was later arrested and fined in Police Court.
" 28....	5.20 p.m...	Dundas St., Galt....	H. 3355.....	Auto disregarded watchman's stop sign and crossed tracks in front of freight train.
Nov. 28....		Dufferin St., Toronto.	K-9372.....	Automobile ran into and damaged north gate and also gate stand.
Dec. 2....	12.10 a.m...	Queen St., Chatham..	X. 2329.....	Auto ran into gate arm, breaking it.
Dec. 7....		Raglan St., Renfrew..		Truck ran under gates on north side of track when gates on south side were down, breaking west gate on south side.
Dec. 9....	8.50 p.m...	Provincial Highway No. 15 M-9, Belleville S.D.	C. J. 763.....	Auto driven in front of approaching train and was struck. Driver saw train but thought it was moving in opposite direction and had crossed over highway.
Dec. 9....		Front St. West, Toronto.	29979-Que....	Automobile travelling east ran into and broke gate arm of No. 5 gate.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Concluded*ONTARIO DISTRICT—*Concluded*

Date	Time	Crossing	Auto No.	Dangerous Practice
Dec. 9....	6.15 p.m...	Richmond St., London.	W. 3350.....	Auto ran into southeast gate arm which was down, breaking it.
" 9....	11.20 a.m...	Adelaide St., London.	B. 4683.....	Auto ran into railway crossing sign post. Driver claimed something wrong with back wheels and could not control car.
" 12....	5.20 p.m...	Queen St., Chatham..	.....	Auto going north ran into southeast gate arm, breaking it.
" 14....	9.30 a.m...	Mil. 101-1 Elmstead..	Z. 8250.....	Auto going south ran into gasoline track car, knocking it off track and causing injury to section foreman.
" 15....	7.35 p.m...	Richmond St., London.	U. 5232.....	Auto came to stop at gates which were down for passenger train. Driver's foot slipped off brake and auto went part way through centre of south gates, breaking end off one gate arm.
" 17....	7.45 p.m...	Queen St., Lindsay, Ont.	Ont. 24969-C....	Auto driven in front of approaching train, struck and damaged slightly. Driver stated he did not hear or see train.
" 21....	9.15 a.m...	Jeffery St., Chatham.	X. 387.....	Auto failed to see yard engine approaching or hear whistle or bell signals and drove into crossing in front of yard engine, resulting in auto being struck and damaged.
" 25....	12.45 a.m...	Centre St., Chatham.	56074-C.....	Auto ran into gate arm breaking it, stopping foul of main track and had bumper struck and damaged by locomotive.
" 31 . .	12.05 p.m.	Quebec St., London...	V. 4903. . . .	As passenger train No. 38 about 40 yards from crossing, auto crossed tracks in front of train and narrowly missed knocking crossing watchman down.
Jan. 1 . .	10.30 p.m.	Richmond St., London.	53-828-C.....	Auto truck struck northwest gate arm, breaking it. Driver stated he got too close before noticing gate arm was down.
Jan. 2....	.....	Raglan St., Renfrew..	CX-586 Ont....	Gates were down and bell was ringing when auto struck gates, breaking end off both.
Jan. 7....	1.47 p.m...	Montreal St., Kingston, Ont.	.....	Auto driven in front of approaching train, and while brakes were applied on the train, was unable to avoid striking auto, which was slightly damaged.
" 26 . .	4.40 p.m...	Waterloo St., London.	53337-C.....	Although gates down and crossing bell ringing, auto ran into and broke gate arm.
Jan. 28....	.....	" "	J. 9628.....	Automobile ran into and damaged north half of No. 5 gate.

TORONTO, HAMILTON AND BUFFALO RAILWAY CO.

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Dec. 23....	7.35 p.m...	John St., Hamilton, Ont.	23565C.....	Failed to observe lowered gate, crashed into it, breaking same.

THE ESSEX TERMINAL RAILWAY

Date	Time	Crossing	Licence No. of Auto	Dangerous Practice
Jan. 15....	6.25 p.m...	Dougall Ave., Windsor, Ont.	Ont. Y-733.....	Driver of auto drove through crossing gates. Passed four autos waiting for gates to lift and was able to beat the train to the crossing.

Name	Address
J. A. Smith	123 Main St. N.Y.C.
W. B. Jones	456 Elm St. Phila.
C. D. Brown	789 Oak St. Wash.
E. F. Green	101 Pine St. Balt.
G. H. White	234 Cedar St. Chic.
I. J. Black	567 Birch St. St. Louis
K. L. Gray	890 Spruce St. Minn.
M. N. Hall	112 Ash St. Ind.
O. P. King	345 Willow St. Pitt.
Q. R. Lee	678 Magnolia St. Mem.
S. T. Scott	901 Poplar St. N. O.
U. V. Walker	1234 Hickory St. San A.
W. X. Young	4567 Sycamore St. Port.
Y. Z. Allen	7890 Chestnut St. Phila.
A. B. Carter	1011 Walnut St. Wash.
C. D. Evans	2345 Elm St. Balt.
E. F. Harris	3456 Oak St. Chic.
G. H. Martin	4567 Pine St. St. Louis
I. J. Nelson	5678 Cedar St. Minn.
K. L. Phillips	6789 Birch St. Ind.
M. N. Reed	7890 Spruce St. Pitt.
O. P. Stewart	8901 Ash St. Mem.
Q. R. Thomas	9012 Willow St. N. O.
S. T. Turner	1234 Magnolia St. San A.
U. V. Wilson	2345 Poplar St. Port.
W. X. Wood	3456 Hickory St. Phila.
Y. Z. Wright	4567 Sycamore St. Wash.
A. B. Adams	5678 Chestnut St. Balt.
C. D. Baker	6789 Walnut St. Chic.
E. F. Clark	7890 Elm St. St. Louis
G. H. Davis	8901 Oak St. Minn.
I. J. Edwards	9012 Pine St. Ind.
K. L. Fisher	1234 Cedar St. Pitt.
M. N. Gibson	2345 Birch St. Mem.
O. P. Hamilton	3456 Spruce St. N. O.
Q. R. Ingram	4567 Ash St. San A.
S. T. Jackson	5678 Willow St. Port.
U. V. Keller	6789 Magnolia St. Phila.
W. X. Lester	7890 Poplar St. Wash.
Y. Z. Long	8901 Hickory St. Balt.
A. B. Mason	9012 Sycamore St. Chic.
C. D. Myers	1234 Chestnut St. St. Louis
E. F. Nichols	2345 Walnut St. Minn.
G. H. Oliver	3456 Elm St. Ind.
I. J. Parker	4567 Oak St. Pitt.
K. L. Quinn	5678 Pine St. Mem.
M. N. Roberts	6789 Cedar St. N. O.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

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No. 3

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Application of the Canadian National Railways for an Order directing—(1) That the Toronto Transportation Commission cease operating its cars across the tracks of the Canadian National Railways at what is commonly known as the Sunnyside overhead bridge, until leave to so cross has been obtained from the Board of Railway Commissioners for Canada. (2) For a contribution from the Toronto Transportation Commission of ten per cent of the original cost of the bridge with interest thereon at five per cent from the date of the construction of the tracks of the Transportation Company until the amount is paid. (3) For an order that the Transportation Commission pay to the railway company 1/10 of the annual maintenance cost of the bridge from the said date to the present time, with interest thereon at five per cent from the dates on which such payments are from time to time made, and the same proportion of the maintenance charges accruing in the future.

File No. 588.15

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

As originally launched this application was for a direction—

- (1) That the Transportation Commission shall obtain an order from the Board for authority to cross the Canadian National Railways with their tracks.
- (2) For a contribution from the Toronto Transportation Commission of ten per cent of the original cost of the bridge with interest thereon at five per cent from the date of the construction of the tracks of the Transportation Company until the amount is paid.
- (3) For an order that the Transportation Commission pay to the railway company one-tenth of the annual maintenance cost of the bridge from the said date to the present time, with interest thereon at five per cent from the dates on which such payments are from time to time made, and the same proportion of the maintenance charges accruing in the future.

The bridge in question was built by the Grand Trunk Railway Company under an order of the Board in or about the year 1911, at the crossing com-

monly known as the Sunnyside crossing at or near the junction of King and Queen streets, carrying Lake Shore road over the Grand Trunk tracks and right of way.

It is admitted that no order of the Board has ever been made giving the Toronto Transportation Commission authority to cross this bridge. The position then is that the Toronto Transportation Commission is operating across Sunnyside bridge unlawfully. This being the case the Board pointed out to Mr. Pratt, counsel for the Canadian National Railways, that it would not make an order for contribution against a trespasser. Mr. Pratt then applied for an order restraining the Toronto Transportation Commission from crossing.

The only answer to this application was that the Toronto Transportation Commission did not lay the tracks upon which it is now operating across the bridge and, consequently, that section 252 does not give the Board jurisdiction to interfere with the operation of its cars across the bridge.

Section 252 of the Railway Act provides as follows:—

“(1) The railway lines or tracks of any railway company shall not cross or join or be crossed or joined by or with any railway lines or tracks other than those of such company, whether otherwise within the legislative authority of the Parliament of Canada or not, until leave therefor has been obtained from the Board as hereinafter provided.”

The section then goes on to require the applicant before such leave to submit a plan and profile of such crossing or junction, and then lays down the conditions upon which the Board may grant permission for such crossing.

Mr. Fairty on behalf of the Toronto Transportation Commission says that his client does not come within the terms of this section because its lines or tracks do not cross “any railway lines or tracks.”

Mr. Fairty's contention amounts to this, that if a tramway company finds rails laid down upon a bridge crossing a railway track it can connect up with these rails and operate its cars across the bridge without obtaining permission of the Board. It is hardly necessary to take up time replying to this argument. Such a construction would render the section valueless.

The judgment of the Board is that unless the Toronto Transportation Commission applies on or before the 5th day of April for leave to cross the bridge at Sunnyside, an order will go restraining the Toronto Transportation Commission from crossing this bridge with its cars and imposing a penalty for any breach of such order.

OTTAWA, March 24, 1932.

Assistant Chief Commissioner McLean and Commissioner Norris concurred.

ORDER No. 48357

In the matter of the application of the Canadian National Railways, hereinafter called the “Applicants,” for an order directing—(1) That the Toronto Transportation Commission, hereinafter called the “Commission,” cease operating its cars across the tracks of the Applicants at what is commonly known as the Sunnyside Overhead Bridge, until leave so to cross has been obtained from the Board; (2) That the Commission contribute ten per cent of the original cost of the bridge, with interest thereon at five per cent from the date of the construction of the tracks of the Commission, until the amount is paid; and (3) That the Commission pay to the Applicants one-tenth of the annual maintenance cost of the

bridge from the said date to the present time, with interest thereon at five per cent from the dates on which such payments are made from time to time, and the same proportion of the maintenance charges accruing in the future.

File No. 588.15

THURSDAY, the 24th day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 23, 1932, in the presence of counsel for the applicants, the Commission, and the City of Toronto, and what was alleged; and upon reading the written submissions filed,—

The Board orders: That, unless the commission applies to the Board on or before the fifth day of April, 1932, for leave to cross the said bridge at Sunnyside, in the city of Toronto and province of Ontario, an order will issue restraining the commission from crossing the bridge with its cars and imposing a penalty for any breach of such order.

C. P. FULLERTON,
Chief Commissioner.

Applications under Sections 33 and 287 of the Railway Act for an Order amending General Order of the Board No. 449, dated September 8, 1927, and the Uniform Rules governing the determination of Visual Acuity, Colour Perception, and Hearing of Railway Employees.

File 1750.17.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The application as launched by Mr. W. L. Best, Vice-President and National Legislative Representative of the Brotherhood of Locomotive Firemen and Enginemen, sets out as follows:—

“Pursuant to a request of the Canadian Legislative Board of the Brotherhood of Locomotive Firemen and Enginemen, I hereby apply to the Board for an order under sections 33 and 287 of the Railway Act, amending General Order No. 449, dated the 8th September, 1927, and the Uniform Rules Governing the Determination of Visual Acuity, Colour Perception, and the Hearing of Railway Employees approved thereunder, so that the Standards of Visual Acuity—Indoor Tests—for ‘Promotion and Re-examination’ in Class A, shall read:—

“Promotion—

“20-30 combined and not less than 20-40 in either eye with or without glasses.

“Re-examination—

“20-30 combined and not less than 20-40 in either eye with or without glasses.

“In support of the above application at the hearing, I shall endeavour to show,—

"1. That under the Uniform Rules as revised and effective December 1, 1927, enginemen have since been disqualified on re-examination under the indoor tests, by reason of the change made in the rules on recommendation of the Railway Association of Canada, although having as high a standard of visual acuity as when examined under the old rules;

"2. That in accepting the reasons given for the proposed changes in the rules, the representatives of our organization did not anticipate it would be more difficult for enginemen when taking re-examination than under the old rules;

"3. That firemen with several years experience who have been permitted to wear glasses are being disqualified when required to take the promotion examination because of being denied the privilege of wearing glasses, as in re-examination; and

"4. That if the present rules are continued, a large number of experienced enginemen are liable to be disqualified, both under promotion and re-examination tests, who are in all respects safe and desirable employees to continue in locomotive service."

The question of the rules in connection with visual acuity has engaged the attention of the Board from time to time. The Board's interest is concerned with seeing that adequate provision is made for safety in so far as visual acuity is concerned. This adequacy of provision is of importance both for the traveller on the railway and for the employee of the railway. While impaired vision has a bearing on the type of work an employee can be engaged in, this phase of the matter is not one for the Board to determine. The type of work in which an employee may engage is a matter of the internal economy of the railway.

The terms used as measuring visual acuity may be defined:—

Combined vision means both eyes uncovered.

20/30 means that a candidate, at a distance of 20 feet, requires, on account of weakness of vision, that the letter on which he is testing his sight would, with normal vision, be that which could be seen at a distance of 30 feet.

Other combinations, e.g., 20/50, are explainable in terms of the above.

The Brotherhood of Locomotive Engineers ask that General Order No. 449 be amended so that the field test shall be given a candidate who has failed in the examination, such test being conducted in the presence of a committee composed of the examiner, the district master mechanic, and a representative chosen by the employee; that this test shall be made with combined vision, with and without glasses; and that if the candidate calls the signals correctly he shall not be disqualified for any service he may be entitled to. It is further proposed that the field test shall be held a number of days—later to be specified—after the candidate's first failure.

On the other hand, the railway companies object to the combined vision, arguing that it is not necessary or advisable and setting out, further, that under General Order No. 94 combined vision caused confusion and difference of opinion, the reason for this being that it could not be clearly defined. The railway companies also object to the addition of a representative of the employees on the committee.

The locomotive engineers are thus raising the question of having field tests taken with combined vision as against the railways declining and requiring it to be taken with both eyes separately. The application made involves the question of continuing the ruling given by the late Assistant Chief Commissioner Scott in April, 1913, which was to the effect that if an employee called the signals properly and correctly he should be permitted to continue in the regular employment to which he is assigned.

Some discussion took place in regard to the adding of a third class. Both the railway companies and the Brotherhood of Locomotive Engineers objected to the introduction of such a class, pointing out that it would raise complications as to seniority of divisions or districts. The railway companies particularly emphasized that there were not a sufficient number of places where men failing to qualify in Class A and automatically reverting to Class B could be placed.

Mr. Best, for the Brotherhood of Locomotive Firemen and Enginemen, favoured the establishment of a third class; but, on consideration, I do not think that, on what we have before us, we are justified in making such a direction.

The field test may be allowed on the basis of combined vision. On the evidence submitted, the Board is not justified in directing that there should be any change in respect of the committee which at present deals with field tests under Rule 27.

Mr. Best asked for an amendment to General Order No. 449 covering indoor tests for promotion and re-examination on Class A, and suggested that for promotion the standard be made 20/30 combined and not less than 20/40 in either eye, with or without glasses. He asked for re-examination on a test of 20/30 combined and not less than 20/40 in either eye, with or without glasses. This may be allowed.

It is contended that employees who, under General Order No. 94, were permitted to take the re-examination with combined vision and who must now take it with each eye separately are not able to read the standard in each eye separately, and are being adversely affected and reduced from road service to Class B, which is yard or other service designated by the company. An amendment may be allowed as follows, viz., 20/30 combined, with or without glasses, provided there is 20/30 in one eye and not less than 20/50 in the other eye, with or without glasses.

As pointed out later, the Michigan Central Railroad, for reasons given, desires to be treated in a different way from other roads coming within the scope of the rules. The rule which it proposes is:—

“Not less than 20/50 in one eye and not less than 20/70 in the other, without glasses, provided that with glasses the vision is 20/20 in one eye and at least 20/30 in the other.”

The standards for entrance to service, namely 20/20, without glasses, is the same in the Michigan Central proposal as in General Order No. 449; and from that point the Michigan Central proposals differ in most cases from the provisions of General Order No. 449; for example, in the Promotion standard, Class A, the Michigan Central provides “Not less than 20/20 in one eye, and not less than 20/40 in the other, without glasses,” while General Order No. 449 provides “Not less than 20/30 in one eye, and not less than 20/40 in the other, without glasses.” The Michigan Central, through its technical expert, Dr. Parker, contends that 20/30 with glasses is an aided or false basis to begin on, and that the oculist has, therefore, no opportunity to determine the eye condition. It is to be noted that as between General Order No. 449 and the Michigan Central proposals, all the entrance to service standards are identical, the provision being “Not less than 20/20 without glasses.” Rule 18 of the Michigan Central requires that the examination without glasses is to be taken with both eyes open. With glasses, the re-examination at regular intervals keeps the examiner in touch with the condition of the eye.

It does not appear that other railways are experiencing any difficulty in working under the standards provided for by General Order No. 449; trains are being run at high speed and under severe conditions of automatic signal control, as well as other signals having to be read at all times. The conten-

tion that safety is being jeopardized by reason of the lowering of the standard in the Promotion standard by changing from 20/20 without glasses to 20/30 with glasses is not conclusive. It has to be borne in mind that the candidate is permitted prior to the promotion to take the re-examination with glasses, if necessary.

The Michigan Central contends that the rules authorized by General Order No. 449 are minimum rules and that the railway company should be allowed to raise the standard, if it so desires. Its proposed rules are the same as in operation on the New York Central and a large number of other lines in the United States; and the company argues that it should not be subject to separate rules for the Canadian lines and proposes, what it states, are higher standards.

In regard to movements lying wholly within the jurisdiction of the Board the standards operative under the Board's order should be made applicable. In the case of international movements, it is open to the Michigan Central to use standards which are higher and are in use on American railways.

Commissioners Norris and Stoneman concurred.

April 2, 1932.

GENERAL ORDER No. 498

In the matter of the application on behalf of the Canadian Legislative Board of the Brotherhood of Locomotive Firemen and Enginemen, hereinafter called the "Applicant," under Sections 33 and 287 of the Railway Act, for an Order amending the General Order of the Board No. 449, dated September 8, 1927, prescribing Uniform Rules Governing the Determination of Visual Acuity, Colour Perception, and Hearing of Railway employees.

File No. 1750.17

WEDNESDAY, the 6th day of April, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 4 and 5, 1930, in the presence of counsel for and representatives of The Railway Association of Canada, the Canadian Pacific, Canadian National, and Toronto, Hamilton & Buffalo Railway Companies, the Michigan Central Railroad Company, the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen, and what was alleged; and upon the report and recommendation of the Chief Operating Officer of the Board,—

The Board Orders: That the "Uniform Rules Governing the Determination of Visual Acuity, Colour Perception, and Hearing of Railway Employees," as prescribed by the said General Order No. 449, dated September 8, 1927, be amended as follows, namely:—

By striking out the promotion and re-examination statements under the heading, "Standards of Visual Acuity," "Class A," and substituting therefor the following:—

"Promotion

"20/30 combined, with or without glasses, provided there is 20/30 in one eye and not less than 20/40 in the other eye, with or without glasses.

" Re-examination

20/30 combined, with or without glasses, provided there is 20/30 in one eye and not less than 20/50 in the other eye, with or without glasses."

2. That the provisions of the said General Order No. 449, as amended, be made to apply to the Michigan Central Railroad Company in so far as movements lying wholly within the jurisdiction of the Board are concerned. In the case of international movements, the Company may use standards which are higher and which are in use on American railways.

S. J. McLEAN,

Assistant Chief Commissioner.

Application of the Canadian National Railways in respect to the cost of Main Street overhead bridge, Toronto, constructed in pursuance of Order No. 29923, dated July 3, 1920, as amended by Order No. 40120, dated January 3, 1928.

(File No. 24822)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This application arises in connection with the now somewhat celebrated Main Street bridge over the tracks of the Canadian National Railway Company in the city of Toronto.

In order to understand the nature of the application, it is necessary to give a brief history of this bridge. The following facts are taken from the report of the judgment of the Privy Council, on the appeal of the Toronto Transportation Commission, hereinafter called the commission, from the judgment of the Supreme Court, which will be found in 1930 A.C., p. 704.

Prior to 1884 a public highway known as Dawes road, then situated in the township of York, crossed on the level the lines of the Grand Trunk Railway, now the Canadian National Railway. By an agreement of that year between the township and the railway company, a portion of Dawes road crossed by the railway was closed and a new substituted highway, now called Main street, was carried over the railway by a bridge which the railway company covenanted to build and keep in repair at its own expense. The district in which the bridge was situated subsequently became urban in character and was annexed to the city of Toronto.

In 1919 the corporation of the city applied to the Railway Board for an order on the railway company to reconstruct the bridge, and on July 3, 1920, the Board by Order No. 29923 ordered the railway company to do so at their own expense.

The former bridge was physically solid and capable of carrying without the danger of a breakdown the traffic offered, but because of its dimensions was inadequate to accommodate the volume of the traffic.

The new bridge was completed and open for traffic on December 1, 1921.

On September 1, 1921, the commission assumed the management of the street railway system in Toronto.

In June, 1922, the commission decided to construct a line over the new bridge and began to lay its tracks on Main street.

On June 26, 1922, the railway company applied for a review of the allocation of cost of the new bridge.

On October 10, 1922, upon the application of the commission, the Board granted it permission to cross with its street railway the line of the railway company, by means of the new overhead bridge, pending the disposal of the railway company's application for review. The commission has accordingly since October 19, 1922, operated a service of street cars over the bridge.

On March 4, 1926, the Board granted the railway company's application for a rehearing of its former Order No. 29923 imposing the cost of the reconstruction on the railway company alone. The general ground for granting rehearing was apparently that in pronouncing their former order the Board had been under a misconception as to the facts relating to the construction of the original bridge, and it consequently held the case to be governed by an inapplicable precedent. Subsequently on January 3, 1928, by an Order, No. 40120, amending former order of July 3, 1920, the Board imposed the cost of the work of reconstruction as to 60 per cent on the railway company, as to 30 per cent on the city of Toronto, and as to 10 per cent on the commission.

The commission thereupon applied to the Board and obtained leave to appeal on the ground that as a matter of law the Board had no jurisdiction to order a contribution from the commission towards the cost of reconstructing the bridge.

The appeal of the commission to the Supreme Court resulted in the affirmation of the order of the Board, and a subsequent appeal to the Privy Council was dismissed.

The Canadian National Railway Company now apply to this Board for an order amending Order No. 29923 in the following particulars:—

(a) That the city of Toronto shall bear and pay the whole cost of maintaining the surfacing, both of the said bridge and approaches and any necessary curbing;

(b) The balance of the cost of maintaining the said bridge to be borne and paid 60 per cent by the applicants, 30 per cent by the city of Toronto, and 10 per cent by the commission.

The railway company further asks for a decision on the question as to whether or not the value of a forty-foot strip of land deeded to the city of Toronto by the Grand Trunk Railway Company in the year 1922 for the nominal sum of one dollar, in order to avoid damages to certain abutting land-owners, should be included in the cost of the construction of the bridge.

A further question was raised as to the interest on construction costs between July 3, 1920, the date of Order No. 29923, and January 3, 1928, the date of Order No. 40120.

The city of Toronto in reply to the application has filed the following defence:—

1. That it opposes the said application.

2. That it is willing to maintain the necessary pavement surface and sidewalks on the bridge structure and approaches thereto exclusive of the street railway track allowance which is subject to an arrangement between the Toronto Transportation Commission and the city of Toronto, provided the Canadian National Railway maintain *in toto* the bridge structure.

3. In respect to the forty-foot strip of land deeded to the city by the Grand Trunk Railway Company in the year 1922 the city contends that the said strip of land was conveyed to it for highway purposes and not by way of mitigation of damages as alleged by the railway company, and that the value of same should not accordingly be taken into consideration or form part of the cost of the said work.

4. By Order No. 29923, dated July 3, 1920, the city was ordered to bear and pay the cost of surfacing both the bridge and approaches and any necessary curbing, but otherwise the entire cost of the reconstruction of the said bridge

was to be paid by the Canadian National Railway (Grand Trunk Railway). Subsequently by Order No. 40120, dated January 3, 1928, the said Order No. 29923 was amended so as to provide that the cost of reconstructing the said bridge should be borne and paid 60 per cent by the Canadian National Railways, 30 per cent by the city of Toronto, and 10 per cent by the commission. The city was accordingly not obliged to pay any portion of the cost of this work except in respect to surfacing the bridge and approaches and any necessary curbing, until the amending Order, No. 40120, was made on January 3, 1928, and should not, therefore, it is submitted, be required to pay any interest charges except from the said 3rd day of January, 1928, which it is ready and willing to pay.

5. The city contends that the said amending Order No. 40120 superseded the said Order No. 29923 as to cost, and that the cost of surfacing both the bridge and approaches thereto and any necessary curbing should form part of the cost of the said work and be paid for in the proportions provided for in the said Order No. 40120.

The commission also filed a defence in which it stated that it was content to abide by the adjudication by the Board of the dispute between the city and the Canadian National Railway Company and its contribution, it submitted, must be adjusted having regard to the outcome of such adjudication.

Dealing first with the cost of maintaining the surfacing of the said bridge and approaches and any necessary curbing, I am of the opinion that this is a proper charge to the city of Toronto. It has been the practice of the Board for years to order any surfacing over and above the surfacing in existence before the doing of the work to be paid by the municipality concerned.

When the original Order No. 29923 was made, paragraph 2 required "that the applicant bear and pay the cost of surfacing both bridge and approaches and any necessary curbing." The subsequent order provides as follows:—

"The Board Orders: That the said Order No. 29923 dated July 3, 1920, be amended to provide that the cost of reconstructing the bridge over the tracks of the Canadian National Railway at Main street, in the city of Toronto and province of Ontario, be borne and paid 60 per cent by the applicants, 30 per cent by the city of Toronto, and 10 per cent by the Toronto Transportation Commission."

While literally the cost of surfacing and curbing is included in the general words of this provision, that is "the cost of reconstructing the bridge," I do not think it was ever intended that provision 2 of Order No. 29923 dealing with the cost of surfacing and curbing should be interfered with. To include the cost of surfacing and curbing in the general costs of such work as the Main Street bridge would be contrary to every prior ruling of the Board. I, therefore, hold that provision 2 of Order No. 29923 is in full force and effect and is in no way supplanted by Order No. 40120. Apart altogether from the question of the strict construction of the order, the city of Toronto should pay the cost of this surfacing and curbing and, if necessary, the Order may be amended to so provide.

In dealing with the forty-foot strip of land deeded to the city and determining whether its value should be included in the general cost of the bridge, it must be borne in mind that when this deed was made in the year 1922 the bridge was being constructed under an order of the Board which required that the railway company, apart from the cost of the surfacing and curbing, should build the bridge at its own expense.

In making preparations for the work it became evident to the Engineers of the Canadian National Railway Company that if the line of approach to the railway on the south side of the new bridge were to follow the line of the old bridge, the railway company would be involved in heavy damages by

reason of the presence of a number of industrial plants immediately west of the line of approach. The railway company owned a considerable quantity of land on the east side of the approach and, after giving the matter careful consideration, the engineers of the railway company decided that a large saving would be made if the whole line of approach were moved easterly. This course was adopted and the approaches moved forty feet to the east, thus avoiding injury to the property holders on the west and payment of heavy damages.

Mr. Stone, Divisional Engineer of the Canadian National Railway, who prior to the construction of the bridge was asked to make a report, investigated the matter on the ground and reported advising the plan subsequently adopted. He was called as a witness and stated that if the approaches to the bridge had been built on the original site it would have added very greatly to the cost of the bridge.

Mr. Hewson, the engineer of the railway company in charge at the time, stated that there was no question about the advisability of making the change, and that construction on the original site would have run into very heavy damages.

I am satisfied from the evidence that the course adopted was the most economical one, and I am of the opinion that the value of the land in question should be included in the general costs of the bridge.

The Canadian National Railway Company claims interest on construction costs between July 3, 1920, the date of Order No. 29923, and January 3, 1928, the date of Order No. 40120, the city of Toronto admitting the claim for interest from the latter date. I can see no reason why the claim of the railway company to include interest on construction costs should not be allowed. I would allow interest from the 3rd day of January, 1921, until the 3rd day of January, 1928.

The most difficult matter in connection with the present application is to determine the proportion of the cost of maintenance of the bridge, apart from the surfacing and curbing, that should be borne by the respective parties. The railway company claims that the city of Toronto should pay thirty per cent and the commission ten per cent of the cost of maintenance. Mr. Fairty, who appeared for the commission, claims that his clients should not be ordered to pay any share of the maintenance of the bridge. His contention is that deterioration in steel bridges is almost entirely due to the effects of fumes from locomotives. He called in support of this theory Mr. Duncan, an engineer, whose evidence bears out Mr. Fairty's contention.

Dealing with the effect of vibration, this witness said that owing to the weight of the tram car being distributed over the rail the stresses of such a car are not as great as a 5-ton truck, and he added that the damages caused by street car traffic would be negligible.

In answer to the evidence given by Mr. Duncan, Mr. Pratt called Mr. Ambrose, Chief Engineer of the Toronto Terminal Railway Company. He said that vibration and impact cause deterioration and loosening of rivets. He stated that he considered the railway company should only bear 60 per cent of the cost of maintenance. He was unable, however, to give the data upon which he based his opinion. He admitted that he included obsolescence in arriving at the 60 per cent, and he did not attempt to deny that the fumes from locomotives were chiefly responsible for the deterioration of steel bridges. It may be that the vibration caused by street cars and heavy vehicles has a tendency in the course of years to weaken a bridge, but I have never heard of a steel bridge becoming defective from such causes, and it is a well known fact that there are many highway bridges that have been standing for thirty or forty years and are still in a good state of preservation. It, however, is undoubtedly true that dampness in

the course of time has a deteriorating effect upon steel and in order to protect the steel it is necessary from time to time to paint it.

I think that both the city and the commission should pay a proportion of the cost of the ordinary maintenance of the bridge, but I have had great difficulty in deciding what such proportion should be. I have come to the conclusion that the city of Toronto and the commission should bear, respectively, thirty and ten per cent of the cost of the ordinary maintenance of the bridge and approaches such as painting, replacing rivets, etc.; the balance of the cost of maintenance shall be borne by the Canadian National Railway Company.

I am basing my finding on this point solely on the evidence given in this case and do not wish to be understood as laying down a rule to be applicable in all cases.

Assistant Chief Commissioner McLean and Commissioner Norris concurred.

OTTAWA, April 5, 1932.

ORDER No. 48395

In the matter of the Order of the Board No. 29923, dated July 3, 1920, requiring the Grand Trunk Railway Company to reconstruct the bridge over its tracks at Main Street, in the city of Toronto and Province of Ontario; the Company to bear and pay the cost of surfacing both bridge and approaches and any necessary curbing;

In the matter of Order No. 40120, dated January 3, 1928, amending the said Order No. 29923 to provide that the cost of reconstructing the said bridge be borne and paid 60 per cent by the Railway Company, 30 per cent by the city of Toronto, and 10 per cent by the Toronto Transportation Commission;

And in the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," for an Order amending the said Order No. 29923 as amended by Order No. 40120, to provide that (a) the city of Toronto shall bear and pay the whole cost of maintaining the surfacing, both of the said bridge and approaches, and any necessary curbing; and (b) the remainder of the cost of maintaining the said bridge to be borne and paid 60 per cent by the Applicant Company, 30 per cent by the city of Toronto, and 10 per cent by the Toronto Transportation Commission; and also for a ruling of the Board on the question as to whether or not the value of the forty-foot strip of land deeded to the city of Toronto by the Grand Trunk Railway Company in the year 1922, for the nominal sum of One Dollar, in order to avoid damages to certain abutting land owners, should be included in the cost of the construction of the bridge.

File No. 24822

WEDNESDAY, the 6th day of April, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, March 23, 1932, in the presence of counsel for the applicant company, the city of Toronto, and the Toronto Transportation Commission, and what was alleged,—

The Board orders:

1. That the said Order No. 29923, dated July 3, 1920, as amended by Order No. 40120, dated January 3, 1928, be, and it is hereby, further amended to provide—

- (a) That the city of Toronto bear and pay the cost of maintaining the surfacing of the bridge, and the approaches thereto, over the tracks of the applicant company on Main street, in the said city, and of any necessary curbing;
- (b) That the city of Toronto and the Toronto Transportation Commission bear, respectively, 30 and 10 per cent of the cost of ordinary maintenance of the bridge and approaches, such as painting, replacing rivets, etc.; and that the remainder of the cost of maintenance be borne and paid by the applicant company.

2. That interest on the construction costs of the said bridge and approaches be paid by the city of Toronto to the applicant company from the 3rd day of January, 1921.

3. That the value of the said forty-foot strip of land, deeded to the city by the Grand Trunk Railway Company in 1922, be included in the cost of the construction of the said bridge and approaches.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 497

In the matter of the application of G. C. Ransom, Chairman of the Canadian Freight Association, on behalf of the railway companies subject to the jurisdiction of the Board, for permission to depart from the provisions of General Order No. 479, dated June 28, 1929, and of Rule No. 17 of Circular No. 223, by permitting the filing of one additional supplement to tariffs.

File No. 606

FRIDAY, the 1st day of April, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that, with the present restriction as to the number of effective supplements to tariffs, railway companies are at considerable expense in being required to reissue large supplements to take care of a small number of additional rates, and it being advisable that railway companies be permitted, at the present time, to make effective every possible economy,—

The Board orders: That railway companies subject to the jurisdiction of the Board be, and they are hereby, permitted to issue one supplement to a tariff on file, in addition to the number permitted by General Order No. 479 and rule No. 17 of Circular No. 223, upon the following conditions, namely:—

- (1) the additional supplement shall contain not more than two pages;
- (2) the smallest supplement to any tariff supplemented hereunder must contain four or more pages;
- (3) the matter contained therein, if at the time effective, shall be carried forward and reissued in the next regular supplement; and
- (4) the title page of such additional supplement shall contain the following:—

“Issued under permission of General Order of the Board of Railway Commissioners for Canada No. 497, dated April 1, 1932.”

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48355

In the matter of the application of the International Railway Company, hereinafter called the "Applicant Company," for approval of Tariff C.R.C. No. 2, covering tolls to be charged in respect of the Falls View Bridge and the Queenston-Lewiston Bridge, on file with the Board under file No. 36795.7.

TUESDAY, the 22nd day of March, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's Tariff C.R.C. No. 2, covering tolls to be charged in respect of the Falls View bridge and the Queenston-Lewiston bridge, on file with the Board under file No. 36795.7, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48394

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 5th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 42 to Tariff C.R.C. No. E-1240.
Supplement 34 to Tariff C.R.C. No. E-1244.
Supplement 11 to Tariff C.R.C. No. E-1251.
Supplement 13 to Tariff C.R.C. No. E-1256.

C. P. FULLERTON,
Chief Commissioner.

APRIL 1, 1932.

File 38300

DEAR SIR,—I am directed to inform you that, owing to the increased demand for copies of documents on file with the Board, it has become necessary in future to make a charge for such copies. That after the 1st May, 1932, ten cents per folio will be charged for copies furnished by the Board.

By order,

A. D. CARTWRIGHT,
Secretary.

NOTE.—This charge does not apply to copies of judgments and orders, which are to be sent free following the making of such judgments and orders to those actually concerned in the proceedings.

	153	25	153
		Killed	Injured
Passengers..		1	31
Employees..		5	90
Others..		19	32
		<u>25</u>	<u>153</u>

No. of
Accidents

1 Automobile—Ran into side of train. N.S. licence 34487.
1 Automobile—Auto driver disregarded flagman's signal. N.S. licence 63-757.

3 Automobile—Auto driver failed to stop for crossing. Que. licences T-3531, 32177;
Ont. BR-588.
1 Auto truck—Auto truck driver failed to stop for crossing. Que. licence X-735.
1 Automobile—Auto ran into side of train. Vermont licence 9-809.
1 Automobile—Que. licence H-19063.
1 Horse-drawn vehicle.
1 Pedestrian—Lady passed under lowered gates.

4 Automobile—Auto ran into side of train. Ont. licences V-5462, B-9318, FR-377;
Mass. licence 686858.
1 Auto truck—Auto truck ran into side of train. Ont. licence 55249-C.
1 Automobile—Excessive speed of auto. Ont. licence V-7299.
4 Automobile—Ont. licences NP-841, Y-6134, WM-833; Mich. licence 141-169.
1 Horse-drawn vehicle.
2 Pedestrians.

1 Auto truck—Man. T-103-713.

1 Horse-drawn vehicle.

1 Automobile—Auto stalled foul of track. Alta. licence 26283.

1 Automobile—B.C. licence 65-641.

OTTAWA, March 31, 1932.

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L. J. P. -
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UNIVERSITY OF TORONTO

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, May 1, 1932

No. 4

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Corporation of the City of Ottawa, Ontario, for an Order requiring the demolition and removal of the existing overhead crossing or viaduct of the Canadian National Railways at Fairmont Avenue, Ottawa, and its replacement by a plate girder bridge crossing.

File No. 38040.

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This is an application by the city of Ottawa for an order requiring the demolition and removal of the existing overhead bridge which carries the track of the Canadian National Railway Company over Fairmont avenue, at a point between Wellington street on the north and Carling avenue on the south, and further requiring the construction at the expense of the Canadian National Railway Company of a new bridge.

The grounds upon which the application is based are as follows:—

1. That the existing overhead crossing is an obsolete timber trestle which has been in place for upwards of twenty-five years, with a timber support or pier centered in the roadway of Fairmont avenue, which constitutes an obstruction on the highway.
2. That the said structure affords only twenty-two feet eight inches (22' 8") in breadth of roadway at the place of intersection on Fairmont avenue, and restricts and endangers traffic on such highway.
3. That it is desirable and necessary in order to afford proper and sufficient accommodation for traffic on the said highway that the said crossing should be replaced by a plate girder crossing having a breadth of approximately sixty feet (60') between abutments.

At the hearing counsel directed their evidence mainly to the question of seniority and appeared to regard it as the real point in issue between the parties. The application can, however, be disposed of without regard to the question of seniority.

The evidence fails to show that the present bridge is insufficient to accommodate the present traffic. During the hearing Mr. Proctor tendered a memo-

random purporting to show the traffic on Fairmont avenue between October 27 and October 31, 1931, inclusive. This statement shows a daily average of 492 vehicles and 431 pedestrians or roughly 20 vehicles and 18 pedestrians per hour. This evidence falls far short of establishing that the present bridge is inadequate for the present traffic. It appears to me that the real purpose of the application is to get rid of what Mr. Proctor describes as a "pretty antiquated type of structure for a city of this size."

The city of Ottawa, in my opinion, has failed to make out a case for the order asked for.

As counsel at the hearing appeared to regard the question of seniority as important and directed their evidence and arguments almost solely to this point, I have thought it well to deal with this matter as it will, undoubtedly, arise at some future time. The relevant facts are as follows:—

This line of railway was originally constructed in or about the year 1895 by J. R. Booth and called the Ottawa, Arnprior and Parry Sound Railway, running from Ottawa to Parry Sound. It was subsequently taken over by the Canada Atlantic Railway Company, which was later absorbed by the Canadian National Railway Company.

The bridge in question when constructed was in the township of Nepean, in the county of Carleton, but is now within the limits of the city of Ottawa.

By deed dated the 1st day of April, 1895, containing covenants for title and quiet possession, one Hector McLean, who was then the owner of a portion of the west half of lot 37, in the 1st concession, Ottawa front of the township of Nepean, transferred and conveyed to the said Ottawa, Arnprior and Parry Sound Railway Company a strip of land 703 feet in length and 40 feet in width across said lot 37. The bridge in question is on this land.

The deed recites an award dated June 30, 1893, made under the provisions of the Railway Act fixing compensation for the said land, an order on appeal from said award increasing the compensation, the loss of the original award and the necessity for executing the conveyance in order to carry out the terms of the said award.

The only reservation contained in this deed is the following:—

"Subject nevertheless to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown."

To meet the case made by the filing of the deed above referred to, the city of Ottawa put in evidence three plans covering the property in question. The first plan, No. 111, is dated May 5, 1889, and purports to be a

"Plan of the re-survey of the estate of Hector McLean, Esquire; being the west half of lot No. 37 in the 1st Con. O.F. Nepean, as shown on a plan dated 20th January, 1889, and registered in the Registry office of the county of Carleton on the 15th March, 1889."

This shows a property extending from Richmond road (now Wellington street) on the north to what is now Carling avenue on the south. Block 1 on the north is subdivided into building lots, and block 2, lying immediately to the south of block 1 and covering what is now the right of way of the railway, was subdivided into larger parcels. On this plan is shown a street 40 feet wide, called McLean street, extending along the west side of said property to a point 99 feet south of block 1, where it turns west for 97 feet and then continues south with another jog south in block 4, until it reaches Carling avenue. This street admittedly does not cross at the point where the present crossing of the railway is located.

There is no evidence that any of the lots shown on this plan were ever sold, or that the street called McLean street was ever opened. In fact there is not a line of evidence about the plan, except that it is a copy of a plan in the Registry office.

Another plan was put in evidence purporting to be a copy of plan No. 130 filed in the Registry office on October 4, 1892. This shows a subdivision of a portion of the west half of lot 37 in the 1st concession of Nepean "the property of Hector McLean, Esquire." This plan shows block 2 through which the railway was subsequently constructed subdivided into building lots. It also shows a road called McDonald street, making an extension of McLean street. McDonald street is admittedly on the line of the present Fairmont avenue where it crosses the Canadian National Railway.

In 1904 an application was made by McLean to the judge of the County Court of the County of Carleton for the cancellation in part and the amendment and alteration of plan No. 130 of block 2 in the west half of lot 37, O.F. Nepean. The affidavit of Hector McLean leading the order which was subsequently made, states that the whole of said block 2 is owned by the said applicants, that no sale has been made according to said plan No. 130, that plan No. 130 was prepared and registered previous to the building of the line of railway of the Ottawa, Arnprior and Parry Sound Railway Company across said block 2, and that in view of the said crossing of said block 2 by the said railway, the subdivision of said block 2 as shown on plan No. 130 is altogether inadvisable and disadvantageous, except as regards the position of McDonald street (now known as Seventh avenue) as shown thereon not only to the applicants hereto, who are the sole owners of the said block, but to any possible future public interest in the said subdivision of the said lands.

An order was made dated the 9th day of May, 1904, by D. B. MacTavish, judge of the County Court of the County of Carleton, which provides as follows:—

"It is ordered that the said plan of said block 2, dated October 3, 1892, and registered in the Registry office for the county of Carleton as No. 130 be, and the same is hereby, cancelled in part; that is except in so far as same may appertain to the position of McDonald street (now known as Seventh avenue) as shown thereon.

"And that as regards that part of the said block 2 lying within the limits of the village of Hintonburg east of McDonald street (now known as Seventh avenue) as shown on said plan No. 130, that said subdivision shown thereon be altered and amended by the substitution thereof of the subdivision of the said part of said block 2 now shown and laid down on the plan hereto annexed prepared by John Stewart, P.L.S., dated the 2nd May, 1904, and that this said plan be registered in the Registry office of the county of Carleton."

A copy of this plan was put in evidence. This shows a subdivision bounded on the south by the right of way of the Ottawa, Arnprior and Parry Sound Railway Company. It also shows a street to the west of the subdivision called Seventh avenue, which is shown as crossing the right of way of the railway at a point where the present bridge is located.

The railway company put in evidence a copy of an Order of the Railway Committee of the Privy Council dated February 21, 1902, and also a copy of an Order in Council dated March 31, 1902, approving of the order of the Railway Committee. This order reads as follows:—

"The Canada Atlantic Railway Company having applied, pursuant to the Railway Act, 1888, to the Railway Committee of the Privy Council for Canada for approval of the plans and profiles of the portion of its line of railway now constructed in the township of Nepean, in the county of Carleton and province of Ontario, showing the crossing of all public highways in the said township at rail level, or otherwise. (File No. 9721.)

"The said committee, after due consideration, subject to the sanction of the Governor in Council, hereby approves of the said plans and profiles, and orders accordingly.

"(Sgd.) ANDW. G. BLAIR,
"Chairman.

"OTTAWA, February 21, 1902.

"(Sgd.) COLLINGWOOD SCHREIBER,
"Secretary, Railway Committee, P.C."

A copy of the plan referred to in the order of the Privy Council was also filed which purports to show the highway crossings of the Canada Atlantic Railway in the township of Nepean, but no crossing at the point in question is shown on the said plan.

The railway company claims absolute title to that part of the crossing within its right of way and denies there is any public highway as of right at this crossing.

The city on the other hand claims that there was a public highway at this point prior to the construction of the railway. Mr. Proctor, counsel for the city, argues that a highway may be established either (a) by the operative effect of a statute such as the Surveys Act under which the plotting out of highways upon a subdivision plan, and the sale of lands thereunder, make the highway shown on such plan a public highway; or (b) by public user. The Municipal Act, R.S.O. 1887, chapter 184, section 524, provides among other things that

"All roads laid out by virtue of any statute . . . shall be deemed common and public highways. . . ."

Chapter 152 of the Revised Statutes of Ontario, 1887, entitled "An Act Respecting Surveyors and the Survey of Lands," by section 62 enacts in part as follows:—

"All allowances for roads, streets or commons, surveyed in cities, towns and villages, or any part thereof, which have been or may be surveyed or laid out by companies and individuals and laid down on the plans thereof, and upon which lots of land fronting on or adjoining such allowances for roads, streets or commons which have been or may be sold to purchasers, shall be public highways, streets, and commons. . . ."

The section contains a proviso that the municipal corporation shall not be liable to keep in repair any road, street, bridge or highway laid out by any private person, until established by by-law of the corporation, or otherwise assumed for public use for such corporation as provided in the Municipal Act. It will be observed that the last quoted section applies only to "cities, towns and villages."

McDonald street as shown on plan No. 130 was situate in the township of Nepean and, consequently, the section can have no application. Mr. Proctor tried to get over this difficulty by pointing out that the section was made applicable to townships in 1897 by 60 Victoria, chapter 27, section 20, Ontario, and cited cases to show that the section is retroactive. Whether the section is or is not retroactive matters not, because before it was passed the title to that part of McDonald street which is within the right of way had passed to the railway company by the deed made in 1895 referred to above. Moreover, even if the section were applicable, the affidavit of Hector McLean made on the application to amend plan No. 130 proves conclusively that no lots were ever sold according to that plan.

In his written argument Mr. Proctor states that a lot was sold, as plotted on plan No. 111, and refers to a deed from H. McLean to J. A. Brook dated

October 1, 1892, registered as 15952. I can find nothing in the evidence to show that such a deed was made. Even if such a deed were in fact made it would not help the city because plan No. 111 does not show McDonald street or any street at the crossing in question.

Mr. Proctor further contends that Fairmont avenue had acquired the status of a highway by user prior to the construction of the railway. Two witnesses spoke to the question of user—H. McDonald, a nephew of Hector McLean, who worked for him in 1877, said that McLean's house was south and west of the present bridge. He says Fairmont avenue was just about where it is now, and that it was the only way to get to McLean's house. Gilchrist, who was engaged in the grocery business on Wellington street thirty-nine years ago, delivered groceries at McLean's house. He said that it was used by the public up to McLean's house. Such evidence is entirely insufficient to make out a *prima facie* case of dedication to the public. The road was a private road on McLean's farm, used by his hired man, by the grocer to deliver his groceries and, no doubt, by McLean's friends.

Upon the whole of the evidence I have no hesitation in holding that the Canadian National Railway Company is senior at this crossing.

There is, however, another feature of this case which requires attention. It was stated during the hearing, and established clearly by evidence and by a personal inspection of the bridge by the members of the Board, that under existing conditions there is danger to pedestrian traffic by reason of the fact that pedestrians are compelled to use the same passage through the bridge as vehicles, there being no sidewalks through the bridge.

Fairmont avenue is 60 feet wide south of the bridge and 66 feet wide north of the bridge. The roadway through the bridge is a little over 22 feet in width. In the centre is a timber bent which ordinarily should divide the north and south-bound traffic. The evidence, however, shows that the bulk of the traffic, both north and southbound, goes through the west passage—one witness says ninety-five per cent of it. The traffic moving north frequently takes the west passage. This is partly due to the bad condition of the road through the east passage and partly to the layout of the bridge itself, which rather invites traffic through this side. The sidewalk on the west side of Fairmont avenue bridge from the north ends at the embankment, and a pedestrian approaching the bridge from the north has to turn sharply to the left at the embankment into the west roadway, and thus take the risk of being run down by traffic coming from the south on the wrong side of the road.

We are of the opinion that steps must be immediately taken to remove this danger to pedestrians. This would be ensured by making a cut through the embankment on the west side, so that the sidewalk can be continued through it. An order will go directing the Canadian National Railway Company to remove a sufficient portion of the embankment on the west side of the street to provide for a sidewalk being built on that side. The cost of this work will be paid by the city of Ottawa.

OTTAWA, April 16, 1932.

Commissioners Norris and Stoneman concurred.

ORDER No. 48434

In the matter of the application of the Corporation of the City of Ottawa, in the Province of Ontario, hereinafter called the "Applicant," under Sections 251 and 256 of the Railway Act, for an Order requiring the demolition and removal of an existing bridge of the Canadian National Railway Company, whereby the railway of the said Company is carried over and across Fairmont Avenue, in the said city, and its replacement by a plate girder bridge, with concrete abutments and wingwalls, substantially in accordance with the plan, dated June, 1931, on file with the Board under file No. 38040.

SATURDAY, the 16th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, December 15 and 16, 1931, in the presence of counsel for the applicant and the railway company, and what was alleged; and upon reading the further written submissions filed,—

The Board orders:

1. That the application for the reconstruction of the said bridge at Fairmont avenue, in the city of Ottawa, be, and it is hereby, refused.

2. That the Canadian National Railway Company be, and it is hereby, directed forthwith to remove a sufficient portion of the embankment on the west side of the said street to provide for a sidewalk being built on such west side; the cost of the work to be borne and paid by the applicant.

C. P. FULLERTON,
Chief Commissioner.

Application of the City of Montreal for an Order directing the Canadian National Railway Company to open a roadway on each side of the Mountain Street bridge at the Notre Dame Street end of said bridge, in accordance with plan YID 32.15.1.

File No. 9437.928

Heard at Montreal, P.Q., Tuesday, April 12, 1932, before Chief Commissioner Fullerton and Commissioner Stone.

ORAL JUDGMENT

DELIVERED BY THE CHIEF COMMISSIONER AT THE CLOSE OF THE HEARING
FULLERTON, CHIEF COMMISSIONER:

There is nothing to be gained so far as I can see by reserving this matter, because it seems very clear to us.

The facts are that, on the 9th September, 1930, an order was made for the construction of the Mountain Street bridge over the Canadian National Railways. Plans were filed and approved by the Board. The bridge was completed and opened for traffic in August, 1931. The city now applies to compel the Canadian National Railways to take forthwith the necessary steps to open roadways on each side of Mountain Street bridge at Notre Dame street as shown on plan YID 32.15.1.

The Canadian National Railway does not dispute that the plan in question provides for the construction of roadways parallel with Mountain street. Just here I may refer to the argument made by Mr. Butler that this order is mandatory. I do not regard the order as mandatory. The order reads:—

“that the applicants be and they are hereby *authorized* to construct an overhead bridge at Mountain street.”

The case referred to by Mr. Butler in the Privy Council dealt with an order very different in its wording from the order in this case. The two orders are quite distinguishable.

However that may be, the evidence led by the city is based on the supposition that the street parallel to Mountain street on the west side goes through to Rolland street. This is not the case. The street stops about 100 feet short of Rolland street, and according to the plans runs into a street running south-westerly and northeasterly.

Assuming that the application is to require the Canadian National Railways to build the roads shown on the plan, what are the considerations involved? First, the inconvenience suffered by business men in the vicinity, due to the failure of the company to construct these roads. The evidence does not establish that anyone has suffered. The evidence of all the witnesses called by the city amounts to this, that the construction of this bridge has destroyed their business. That is fully supported by the exhibit put in by Mr. Butler, the letter of Mr. Ogilvie, whom Mr. Butler called as a witness, which reads:—

“Secondly, originally Mountain and Rolland streets were the centre of the fruit trade. While a certain amount of trade still exists there, there is no question in my mind but that with the construction of the new Canadian National Railways fruit terminal the main trade left Mountain street.”

So that all the evidence with regard to the loss of business may be perfectly true but it has no bearing whatever on the issues we are here to determine.

As I see the evidence, there is not a line to indicate that any business man, either on Rolland or on Mountain street, has been damaged to the slightest extent by the failure to construct these parallel roads. The evidence shows that ⁴¹ access to these business properties is ample, no difficulty in getting there, ⁴¹ this is not the trouble. These men have been damaged by the construction of ⁴¹ a bridge, their business has gone away. But that has no bearing on the appli- ⁴¹ cation before us now, namely to compel the Canadian National Railways to spend all this money to open up these streets.

Under ordinary circumstances, if everything were prosperous and people had as much money as they thought they had back in 1929, it is doubtful if we would order the railway company to open these streets. We would ask: Who is inconvenienced by the failure of the company to open them? There would have to be evidence to show that someone was damaged, before the order would be made. But under the present financial conditions a strong case must be made before we would order the railway company to make a large capital expenditure. As a matter of fact, we have not for months past, except it were a matter of absolute danger to life, or some serious situation, made the railways pay a dollar of capital expenditure, for the plain reason that conditions are such that they cannot make such expenditure. Here we are asked to make an order which not only would involve expenditure by the railway company but involves also the destruction of property which to-day is bringing them a revenue.

Under the circumstances we are of opinion that no order should be made. It may be that the day will come when this Board can properly be asked to order that these roads be constructed in accordance with the plan. In our view the present is not the time for such an order. The application will be dismissed.

Application of Abitibi Power and Paper Company, Limited, North Bay, Ontario, for a ruling of the Board as to the ratings legally applicable on wiping rags under the existing provisions of Canadian Freight Classification No. 18.

File No. 33365.85.11.

RULING

By THE BOARD.

It is stated by applicant that what is involved is the L.C.L. rating on wiping rags shipped in machine pressed bales; that it is the contention of the Canadian Freight Association that they are subject to third class rating as provided for in items 16 and 17, page 168, of the Classification, while applicant claims fourth class rating under item 20, page 235.

The provision on page 168 (same ratings being also shown at page 282), reads:—

Item Nos.		Ratings	
		L.C.L.	C.L.
13	Waste:		
14	Cotton waste, manufactured, for packing or wiping including wiping rags:		
15	Oiled, with other than linseed oil, in iron or steel barrels or cans	3	..
16	Other than oiled:		
	In bags	1	..
	In barrels or boxes	2	..
	In machine pressed bales.....	3	..
	In packages named, C.L., min. wt. 24,000 lbs., subject to rule 7 .....	..	5
17	Packing or wiping, manufactured, including wiping rags, woollen or woollen mixed with cotton or jute waste; other than oiled:		
	In bags	1	..
	In barrels or boxes.....	2	..
	In machine pressed bales.....	3	..
	In packages named, straight or mixed C.L., min. wt. 24,000 lbs., subject to rule 7.....	..	5

The wording of item 20, page 235, is shown below:—

Rags, N.O.I.B.N. (see note):	Ratings	
	L.C.L.	C.L.
In bags or in bales not machine pressed.....	3	..
In barrels or crates.....	3	..
In machine pressed bales.....	4	..
In packages named, C.L., min. wt. 24,000 lbs., subject to Rule 7 ..	..	7

Note.—Ratings will also apply on old bags or bagging cut or torn in pieces and having value only for conversion into fibre, or on old worn out carpets or rugs having value only for conversion into fibre or for reweaving purposes.

Applicant states:—

“Our contention is that item 16 is not applicable, inasmuch as it comes under the heading “Cotton waste, manufactured,” etc. (item 14, page 168), which merely provides for the inclusion of wiping rags with cotton waste; and in turn you will observe that item 14 comes under the general heading “Waste,” item 13, page 168. Similarly, item 17 covers packing or wiping, manufactured, and merely provides for the inclusion of wiping rags; this item also coming under the general heading “Waste,”

as covered by item 13. In this connection, we would respectfully refer you to the provision contained in the last paragraph on page 1 of Supplement 2, which reads as follows:—

‘Where any part of the description of an article is found set away from the left margin in a position subordinate to the text preceding it, the description is to be read with its context and particularly with the preceding heading or headings; the effect of its position upon the meaning of a description should be carefully observed.’

“In view of this provision, there can be no doubt that items 14 to 17 (both inclusive) are subordinate to item 13; and, therefore, the matter would seem to resolve itself into one involving the correct interpretation of items 16 and 17 in conjunction with the heading ‘Waste.’ As we understand it, ‘waste’ is what is commonly used, as an example, for wiping locomotives or packing journal boxes; and, in this sense, wiping rags are not waste. If, however, it were the intention to provide for a 3rd class rating on wiping rags under the general heading ‘Waste’ (item No. 13) it seems quite reasonable to assume this would have been done by placing wiping rags in a specific item in proper alphabetical order following item 17.

“There being no specific item in the classification for wiping rags, we contend that item 20, page 235, which covers rags, N.O.I.B.N., and provides for an L.C.L. rating of 4th class for machine pressed bales, is properly applicable.”

Applicant states item 16 “merely provides for the inclusion of wiping rags with cotton waste,” and that item 17 “merely provides for the inclusion of wiping rags”; and contends, further, that there is no specific item in the classification for wiping rags. Applicant’s reasoning is somewhat obscure. It is apparently contended that if an L.C.L. shipment consisted in part of waste and in part of wiping rags, the provision on page 168 for third class rating would govern, while if a shipment consisted solely of wiping rags there is no specific provision and item 20, page 235, governs, providing a fourth class rating. The Board would not approve, or permit the continuance of, any classification provision that would have this unreasonable and discriminatory effect, and does not so construe the classification provisions in question.

Applicant suggests that if it were the intention to provide for a third class rating on wiping rags under the general heading “Waste,” this should have been done by placing wiping rags in a specific item following item 17. As to this, it is the opinion of the Board that the words “including wiping rags” have the same effect as if specific provision were made by a separate item. If it did not, the provision would be entirely meaningless. An examination of the classification shows that this has been the method of making specific provision therein for many articles and we do not consider that the provision quoted (last paragraph page one, supplement two) is relevant, or applicable, with respect to articles so provided for.

For example, on page 55 there is the following provision: —

Bearings, N.O.I.B.N.:

Ball or Roller, including ball or
roller bushings:

Reference to page XV of the Classification, being the index to articles, shows that the foregoing is the only specific provision made therein for ball or roller bushings.

On page 148 (item 14), there is the following provision:—

Sauces, table, including catsup, horseradish, prepared mustard, prepared pepper sauce or salad dressing:

Reference to the index shows that nowhere else in the classification is provision made for catsup, horseradish, prepared mustard, prepared pepper sauce or salad dressing, so that the use of the word “including” with respect to these articles has the effect of making specific provision for them. See also page 94, item 19; page 151, item 11; page 195, item 20; page 196, item 33; page 252, items 18 and 21.

RULING

The ruling of the Board is that under the existing provisions of the classification, wiping rags are specifically classified on pages 168 and 282; that the provision in item 20, page 235, for rags, not otherwise indexed by name, is not applicable on wiping rags, which are indexed by name on pages 168 and 282.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, ONT., April 19, 1932.

ORDER No. 48409

In the matter of the application of the Michigan Central Railroad Company for permission to file, upon one day's notice, effective April 15, a supplement to Tariff C.R.C. No. 3486 eliminating certain rates on canned goods published in error.

File No. 27612.63

SATURDAY, the 9th day of April, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in publishing rates on canned goods from points on the Michigan Central Railroad to points in the province of Quebec, effective April 15, 1932, and its being expedient that such rates be not made effective,—

The Board orders: That the Michigan Central Railroad Company be, and it is hereby, permitted to publish and file, upon one day's notice, effective April 15, 1932, a supplement to Tariff C.R.C. No. 3486 eliminating rates on canned goods, published in item No. 176 of Supplement No. 88 to the said tariff, to Montreal, Quebec, and Sherbrooke, in the province of Quebec.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48415

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

TUESDAY, the 12th day of April, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 687, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be,

and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 687, approved herein, are published in the Temiscouata Railway Company's Tariff C.R.C. No. 413.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48414

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 12th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll on coal from Saint John, New Brunswick, to Rivière du Loup, Quebec, published in Tariff C.R.C. No. E-4551, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. E-4551, approved herein, is \$3.60 per ton of 2,000 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48419

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 13th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the reduced tolls published in item 534-A and 573-B of Supplement No. 44 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items

534-A and 573-B of Supplement No. 44 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

Item 534-A		Rates in cents per 100 pounds	
To			
Caledonia, Ont.			52
Cardinal, Ont.			41½
Danville, Que.			42
Port Credit, Ont.			49
St. Catharines, Ont.			49
Sherbrooke, Que.			39
Welland, Ont.			49
Woodstock, Ont.			55½
Item 573-B		Rates in cents per 100 pounds	
From Saint John, N.B., to		In boxes or crates	In bundles
Galt, Ont.		120	192½
Guelph, Ont.		116	186½
Haileybury, Ont.		167	263
Hanover, Ont.		130½	208
Port Hope, Ont.		105	170
St. Thomas, Ont.		127	203
Trois Rivières, Que.		95	155

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48420

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 13th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 278 of Supplement No. 45 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 278 of Supplement No. 45 to Tariff C.R.C. No. E-4312, approved herein, is 21 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48423

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 13th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 45-B from Avonport, Nova Scotia, to Windsor, Nova Scotia, and in item 156 from Annapolis Royal, Nova Scotia, to Middleton, Nova Scotia, of Supplement No. 44 to Tariff C.R.C. No. 817, filed

by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of the said items 45-B and 156 of Supplement No. 44 to Tariff C.R.C. No. 817, approved herein, are as follows:—

	Rates in cents per 100 pounds
Item 45	5
Item 156	4½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48422

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of their Tariff C.R.C. No. 10, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

THURSDAY, the 14th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' Tariff C.R.C. No. 10, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48462

*In the matter of the General Order of the Board No. 468, dated March 12, 1929, prescribing the specifications for signals at highway crossings;
And in the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for an order relieving them from complying with the provisions of paragraph 3 of the said General Order No. 468, on Sundays, (1) in those locations where there are no Sunday train movements; and (2) in automatic block signal territories.*

File No. 15382

MONDAY, the 18th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

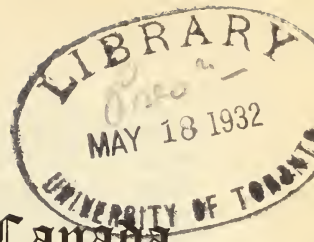
Upon reading the submissions filed in support of the application, and the report and recommendation of the Chief Engineer and the Chief Operating Officer of the Board,—

It is ordered:

1. That the applicants be, and they are hereby, relieved from complying with the provisions of the said paragraph 3 of General Order No. 468, dated March 12, 1929, with regard to daily inspection of electric bells at highway grade crossings, on Sundays, in those locations where there are no Sunday train movements.

2. That the application for relief from the provisions of the said paragraph 3 in automatic block signal territories on Sundays be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.



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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, May 15, 1932

No. 5

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Application of the City of Toronto for leave to appeal to the Supreme Court of Canada from Order of the Board No. 48395, dated April 6, 1932.

(File No. 24822)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This is an application by the City of Toronto for leave to appeal from certain portions of the order of the Board dated April 6, 1932, being No. 48395. The portions of the order from which the applicant seeks to appeal are contained in paragraphs 2 and 3 and are as follows:—

"2. That interest on the construction costs of the said bridge and approaches be paid by the city of Toronto to the applicant company from the third day of January, 1921.

"3. That the value of the said forty-foot strip of land, deeded to the city by the Grand Trunk Railway Company in 1922, be included in the cost of the construction of the said bridge and approaches."

Mr. Geary, K.C., who appeared for the city of Toronto, bases his application on two grounds—

- 1st. That the Board had no jurisdiction to direct the payment of interest, and
- 2nd. That the Board had no jurisdiction to order that the value of the forty-foot strip of land be included in the cost of the construction of the said bridge and approaches.

He also takes the ground that the Board erred in a matter of law in making the said order.

Dealing with the first ground, I should point out that the clause in the order regarding interest is too broadly worded. It reads—

"2. That interest on the construction costs of the said bridge and approaches be paid by the city of Toronto to the applicant company from the third day of January, 1921."

Literally this means on the whole cost of the bridge. What was intended, and what all the parties to the proceedings understood, was interest on the city's share of the construction costs. No point was made of this by counsel which at best would mean an amendment of the wording of the clause to make it conform to the well understood intention.

The facts are briefly the following:—

In 1920 the Board by Order No. 29923 ordered the railway company to construct the Main Street bridge at their own expense. Subsequently, on an application by the railway company for a rehearing, the Board amended Order No. 29923 and imposed the cost of the work of reconstruction as to 60 per cent on the railway company, as to 30 per cent on the city of Toronto and as to 10 per cent on the Toronto Transportation Commission. The earlier order had been made on a misconception of facts. Subsequently disputes arose between the parties as to the right of the railway company to charge interest on the amount of the construction costs between the date of the completion of the work and the date of the amending order. The city of Toronto was willing to pay interest on construction costs from the date of the amending order, but refused to pay interest between the date of the completion of construction and the date of the amending order.

On the application coming before this Board the city of Toronto was ordered to pay interest on the construction costs from a date six months after the date of the original Order for construction, namely from January 3, 1921.

In support of his contention that the Board had no jurisdiction to order the payment of this interest, Mr. Geary cited the four following English cases:—

Borthwick v. Elderslie Steamship Co. Ltd., 1905, 2 K.B., 516.

This was an application for directions as to the entry of judgment for the plaintiff.

On the trial judgment was entered for the defendants. The appeal was allowed and judgment was ordered to be entered for the plaintiff against the defendants "for such sum as may be assessed by a referee to be agreed upon between the parties."

Upon a further appeal to the House of Lords the judgment of the Court of Appeal was affirmed.

The plaintiff claimed interest from the date of the judgment given by the learned judge at the trial, the defendants being willing to pay interest from the time when the amount of damages was determined. The court refused to antedate the judgment in order that the plaintiff should get interest for the time which had elapsed between the trial and the judgment on appeal.

Macbeth v. Maritime Insurance Co., 24 T.L.R. 559, was an action on a policy of marine insurance in which the House of Lords reversed a judgment at the trial in favour of the defendant, which had been affirmed on appeal, and remitted the case to the High Court without saying anything about interest. The plaintiff claimed that he was entitled to interest under a statute which enabled a judge to give interest by way of damages. The plaintiff was allowed the interest claimed.

In *Nitrate Producers v. Short Bros.*, 91 Law Journal, K.B. 871, the judge on the trial gave judgment for the defendant and assessed damages at a sum named, in case his judgment should be reversed on appeal, and his judgment was affirmed by the Court of Appeal but reversed in the House of Lords. The question of whether the plaintiff was entitled to interest from the date of the judgment on the trial eventually reached the House of Lords, which held that when a judgment is for the first

time directed to be entered in favour of any litigant party by the House, the date which the judgment will bear, in the absence of specific direction, must be the date when order is made.

Belgian Grain & Produce Co. v. Cox, 1919 W.N., 317, was an application by the plaintiff to have a judgment antedated, which was refused.

I am unable to understand how these cases have any bearing on the question which arises here. They all deal with the powers of the court to antedate judgments and depend upon specific provisions of the Judicature Act and the various precedents bearing on procedure in the superior courts.

No question of antedating a judgment arises here. In directing that the city should pay interest we are not even exercising the powers given us by section 51 of the Railway Act to review, rescind, change, alter or vary one of our own orders or decisions. As I understand it, we are simply settling a dispute which has arisen between the parties as to what constitutes construction costs and particularly whether or not interest is a factor to be included in such costs.

In the ordinary case where work in the nature of grade separation is ordered by the Board, it is done and paid for by one of the parties interested and on completion the party doing the work is reimbursed by the other party, or parties, in the proportion ordered by the Board. It has been the universal practice to allow as part of the cost of construction interest on the monies which have been expended on the work.

The city admits that interest on construction costs under ordinary circumstances is a proper factor to be included, because it is willing to pay interest from the date of the order which made it liable for 30 per cent of the cost of construction.

I can see no reason why interest on construction costs accruing prior to the order making the city of Toronto liable cannot equally be said to be part of the construction costs. In any event the question is one of fact and not of law.

The second ground taken by Mr. Geary has to do with the forty-foot strip of land deeded to the city. My reasons for including the value of this land as part of the cost of construction have already been given. The only answer set up by the defendant was that "the said strip of land was conveyed to it for highway purposes and not by way of mitigation damages as alleged by the railway company."

I have already found as a fact that the user of the land in question obviated the payment of heavy damages to property owners on the west of the line of approach to the bridge.

I would refuse leave to appeal.

Assistant Chief Commissioner McLean and Commissioner Norris concurred.

OTTAWA, May 7, 1932.

ORDER No. 48573

In the matter of the Order of the Board No. 48395, dated April 6, 1932, amending Order No. 29923, dated July 3, 1920, requiring the Grand Trunk Railway Company to reconstruct a bridge over its tracks at Main Street, in the City of Toronto and Province of Ontario, by apportioning the cost of maintaining the said bridge and approaches; requiring interest on the construction costs to be paid by the City of Toronto to the Canadian National Railway Company from January 3, 1921; and requiring that the value of the 40-foot strip of land, deeded to the City by the Grand Trunk Railway Company in 1922, be included in the cost of the construction of the said bridge and approaches;

And in the matter of the application of the City of Toronto for leave to appeal to the Supreme Court of Canada from the said Order of the Board No. 48395, dated April 6, 1932.

File No. 24822

SATURDAY, the 7th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, May 4, 1932, in the presence of counsel for the city of Toronto and the Canadian National Railway Company, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48487

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Tuffnell-Prince Albert Branch (Nipawin West) from mileage 131·7 to 203·9, in the Province of Saskatchewan.

File No. 37167.15

FRIDAY, the 22nd day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its Tuffnell-Prince Albert Branch (Nipawin West) from mileage 131·7 to 203·9, in the province of Saskatchewan.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48488

In the matter of the application of the Canadian National Railways for approval of cancellation Supplement No. 1 to Toronto Suburban Railway Standard Freight Mileage Tariff C.R.C. No. 7, on file with the Board under file No. 29851.

SATURDAY, the 23rd day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that the Toronto Suburban Railway Company has discontinued service on its line,—

The Board orders: That the said Supplement No. 1 to Tariff C.R.C. No. 7, issued for the purpose of cancellation, be, and the same is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48504

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 26th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 43 to Tariff C.R.C. No. E-1240.

Supplement 30 to Tariff C.R.C. No. E-1255.

Supplement 19 to Tariff C.R.C. No. E-1258.

Supplement 4 to Tariff C.R.C. No. E-1671.

Supplement 1 to Tariff C.R.C. No. E-1829.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48505

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 26th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 296 of Supplement No. 31 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 296 of Supplement of No. 31 to Tariff C.R.C. No. 856, approved herein, are as follows, namely:—

To	Rates in cents per 100 pounds
Windsor, N.S.	10½
Wolfville, N.S.	13
Kentville, N.S.	15
Middleton, N.S.	18
Bridgetown, N.S.	18
Annapolis, N.S.	18
Digby, N.S.	20

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48509

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 26th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 56-A of Supplement No. 17 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 56-A of Supplement No. 17 to Tariff C.R.C. No. 811, approved herein, is 5 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48510

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 26th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 49 of Supplement No. 24 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act. The Dominion Atlantic proportion to be reported at 7·1 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic proportion of the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 49 of Supplement No. 24 to Tariff C.R.C. No. 812, approved herein, are as follows:—

To		Rates in cents per 100 pounds
Sheffield Mill, N.S.	}	10·1
Hillaton, N.S.		
Kingsport, N.S.		
Port Williams, N.S.	. . . . .	9·1

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48511

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 26th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 286 of Supplement No. 30 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 286 of Supplement No. 30 to Tariff C.R.C. No. 856, approved herein, is 10 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48512

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 26th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 71, 294, and 306 of Supplement No. 32 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items

71, 294, and 306 of Supplement No. 32 to Tariff C.R.C. No. 856, approved herein, are as follows:—

Item No.	Rates in cents per 100 pounds
71	22
294	14½
306	17½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48513

In the matter of the application of the Detroit International Bridge Company, hereinafter called the "Applicant Company," for approval of its Tariff C.R.C. No. 5, cancelling C.R.C. No. 4, covering the tolls to be charged in respect of the Ambassador Bridge across the Detroit River between the Town of Sandwich, in the Province of Ontario, and the City of Detroit, in the State of Michigan, on file with the Board under file No. 36795.2.

WEDNESDAY, the 27th day of April, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's tariff C.R.C. No. 5, cancelling C.R.C. No. 4, covering the tolls to be charged in respect of the Ambassador Bridge across the Detroit river, between the town of Sandwich, in the province of Ontario, and the city of Detroit, in the state of Michigan, on file with the Board under file No. 36795.2, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48563

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of the temporary deviation of their Alexandria Subdivision, from mileage 43·53 to 44·2, in the Province of Quebec.

File No. 37131.5

MONDAY, the 2nd day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
F. A. LABELLE, *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicants be, and they are hereby, authorized to open for the carriage of traffic the portion of the temporary deviation of their Alexandria Subdivision between mileage 43·53 and 44·2, in the province of Quebec.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48547

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

TUESDAY, the 3rd day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the through tolls made by adding arbitraries to the rate from Middleton, Nova Scotia, published in section 3 of Supplement No. 14 to Tariff C.R.C. No. E-4324, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said section 3 of Supplement No. 14 to Tariff C.R.C. No. E-4324, approved herein, are to be made by adding the difference between the tolls published in Tariff C.R.C. No. E-4324 and those published in Tariffs C.R.C. No. E-3221 and E-3224 to the through tolls made by the addition of the arbitraries published in Supplement No. 14 to Tariff C.R.C. No. E-4324.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48578

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 2 to Tariff C.R.C. No. 800, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act: The Dominion Atlantic Railway proportion to be reported at \$1.80 per gross ton.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 2 to Tariff C.R.C. No. 800, approved herein, is \$2.02 per gross ton.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48579

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of May, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Coldbrook, Nova Scotia, to Halifax, Nova Scotia, in item 56-B of Supplement No. 18 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 56-B of Supplement No. 18 to Tariff C.R.C. No. 811, approved herein, is $5\frac{3}{4}$ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48580

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of May, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Saint John, New Brunswick, to Halifax, Nova Scotia, in item 85-A of Supplement No. 25 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act: The Dominion Atlantic Railway proportion to be reported at 9 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal toll which but for the said Act would have been effective in lieu of that published in the said item 85-A of Supplement No. 25 to Tariff C.R.C. No. 812, approved herein, is $11\frac{1}{4}$ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48581

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 251 of Supplement No. 33 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 251 of Supplement No. 33 to Tariff C.R.C. No. 856, approved herein, is 19½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48583

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 6th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Falmouth, Nova Scotia, to Halifax, Nova Scotia, in item 135-B of Supplement No. 45 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 135-B of Supplement No. 45 to Tariff C.R.C. No. 817, approved herein, is 6 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48584

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

SATURDAY, the 7th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement No. 55 to Tariff C.R.C. No. E-1235.

Supplement No. 14 to Tariff C.R.C. No. E-1504.

Tariff C.R.C. No. E-1862.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH
OF FEBRUARY, 1932

Railway accidents	133, involving 15 persons killed and 132 injured
Railway accidents at highway crossings	21, involving 13 persons killed and 27 injured
	<hr/>
	154 28 159

	Killed	Injured
Passengers..	—	17
Employees	10	107
Others	18	35
	<hr/>	<hr/>
	28	159

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NOVA SCOTIA

1 Pedestrian.

QUEBEC

1 Automobile—Auto driver failed to stop for crossing. Que. licence 10610.

1 Automobile—Auto ran into side of train. Que. licence H-14724.

1 Horse-drawn vehicle.

1 Pedestrian.

ONTARIO

2 Automobile—Auto ran into side of train. Ont. licences HP-554, S-9713.

1 Automobile—Auto skidded onto track in front of train. Ont. licence T-3659.

1 Automobile—Auto driver's attention fixed on employees leaving cotton mill. Ont. licence HR-158.

4 Automobile—Ont. licences ED-456, Y-2312, EP-634, 57-016C.

1 Horse-drawn vehicle.

1 Pedestrian.

SASKATCHEWAN

1 Automobile—Auto ran into side of train. Sask. licence T-4442.

2 Horse-drawn vehicles.

ALBERTA

1 Automobile—Alta. licence 61-439-31.

1 Pedestrian.

BRITISH COLUMBIA

1 Automobile—B.C. licence 19-218.

Of the 21 accidents at highway crossings, 3 occurred at protected crossings and 18 at unprotected crossings. Fourteen (14) of the accidents occurred during the daylight hours and 6 at night. One accident—time not obtained.

OTTAWA, May 6, 1932.

No. of	
1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36
37	38	39	40	41	42
43	44	45	46	47	48
49	50	51	52	53	54
55	56	57	58	59	60
61	62	63	64	65	66
67	68	69	70	71	72
73	74	75	76	77	78
79	80	81	82	83	84
85	86	87	88	89	90
91	92	93	94	95	96
97	98	99	100	101	102
103	104	105	106	107	108
109	110	111	112	113	114
115	116	117	118	119	120
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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXI

Ottawa, June 1, 1932

No. 6

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

GENERAL ORDER No. 499

In the matter of the application of the Canadian Industries Limited, of Montreal, Quebec, for permission to use fibreboard containers for the carriage of explosives over lines in Canada, when complying with Container Specification 23-F, published in Supplement No. 2 to B. W. Dunn's Tariff C.R.C. No. 2.

File No. 1717.38.2.

FRIDAY, the 20th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Upon its appearing that the carriage of explosives in fibreboard containers is now permitted in the United States, when complying with Shipping Container Specification 23-F, published in Supplement No. 2 to B. W. Dunn's Tariff C.R.C. No. 2, and its being desirable that there be uniformity of regulation in the United States and Canada; and upon the consent of the railway companies, as expressed in a letter from C. P. Riddell, General Secretary of the Railway Association of Canada, dated May 17, 1932:—

The Board orders: That fibreboard boxes, complying with the said Container Specification 23-F and with all regulations contained in B. W. Dunn's Tariff C.R.C. No. 2 and Supplement No. 2 thereto, may be used for the carriage of explosives by railway companies in Canada subject to the jurisdiction of the Board, when such carriage is permitted by the railway companies.

C. P. FULLERTON,
Chief Commissioner.

CIRCULAR No. 232

May 19, 1932.

Uniform Rules re Visual Acuity, etc.

File No. 1750.17

Referring to the Board's judgment in the matter of applications under sections 33 and 287 of the Railway Act for an order amending General Order of the Board No. 449, dated September 8, 1927, and uniform rules governing the determination of visual acuity, colour perception, and hearing of railway employees, it is pointed out that the said judgment sets out "the field test may be allowed on the basis of combined vision." That a question has arisen as to whether this should not explicitly set out that in this test each eye should be tested separately and then the combined vision also tested. That it is submitted that unless one knows what the man can see on the field with each individual eye, the committee which examined him would have very little to go on in deciding the class of service to which he should be assigned. On consideration, it appears to the Board that the point is well taken and that the field test should be with each eye separately, and also with combined vision.

By order of the Board,

A. D. CARTWRIGHT,
Secretary, B.R.C.

ORDER No. 48596

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 330 of the Railway Act, for approval of Supplement No. 1 to Standard Freight Mileage Tariff C.R.C. No. E. 1209, covering lines east of Levis and Diamond, in the Province of Quebec, on file with the Board under file No. 34822.2.

MONDAY, the 9th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That Supplement No. 1 to the applicants' Standard Freight Mileage Tariff C.R.C. No. E. 1209, covering lines east of Levis and Diamond, in the province of Quebec, on file with the Board under file No. 34822.2, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48616

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

WEDNESDAY, the 11th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.**The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 688, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 688, approved herein, are as follows:—

Miles	Rates in cents per 100 pounds
10	9½
15	11½
20	12½
30	14½
35	18
40	19
50	19½
60	22
70	24½
75	25
85	27½
95	29
120	32

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48621

In the matter of the application of the New York Central Railroad Company and the St. Lawrence and Adirondack Railway Company, hereinafter called the "Applicant Companies," under Section 276 of the Railway Act, for authority to open for the carriage of traffic that portion of their line of railway from mileage 39·53 to mileage 43·37.

File No. 37131.10

SATURDAY, the 14th day of May, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant companies be, and they are hereby, authorized to open for the carriage of traffic that portion of the St. Lawrence and Adirondack Railway, as diverted, between mileage 39·53 and 43·37.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, June 15, 1932

No. 7

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Application of the Canadian National Railways and the Canadian Pacific Railway Company for an Order distributing the cost of the subway constructed under the tracks of the Brampton and Galt Subdivisions of the two Railways at St. Clair Avenue, Toronto, under Order No. 46530, dated 8th April, 1931. (Case No. 1353)

Application of the Canadian Pacific Railway Company and the Canadian National Railways for an Order dividing the maintenance costs of subways under the tracks of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian Pacific Railway Company, and the Brampton Subdivision of the Canadian National Railways, at Bloor Street and Royce Avenue, and the Canadian National Railways' Newmarket Subdivision on Bloor Street (Files Nos. 32453 and 32453.6)

Application of the Canadian National Railways for an Order distributing the cost of the Subway constructed under the tracks of its Newmarket Subdivision at St. Clair Avenue West, Toronto, under Order No. 46083, dated 8th January, 1931. (File No. 32453.11)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

These three applications for the distribution of costs were heard together at the sitting of the Board held in Toronto on April 27 last.

Subway under the tracks of the Brampton and Galt Subdivisions of the Canadian National Railways and the Canadian Pacific Railway Company on St. Clair Avenue, in the City of Toronto

This work was done under order of the Board No. 46530, dated April 8, 1931, made upon the application of the Canadian National Railways. The order contained a clause directing the Bell Telephone Company of Canada, the Toronto Hydro-Electric System and the Consumers' Gas Company of Toronto to move such of their utilities as might be affected by the construction of the said subway, when requested to do so by the Chief Engineer of the applicants.

The Canadian Pacific Railway Company are interested in this subway as their tracks are located on Canadian National property at this point and cross the subway. There is a dispute between the Canadian National and Canadian Pacific Railway Companies as to the contribution that the Canadian Pacific Railway Company should make to the cost and maintenance of the work, but

the railways hope to settle this between themselves and we do not deal with this at present.

The Canadian National Railways ask for a contribution of forty per cent from the Railway Grade Crossing Fund, ten per cent from the Toronto Transportation Commission, whose tracks run through this subway, and that the balance of the cost of the work be divided equally between the city of Toronto and the two railway companies. There are no funds at present in "The Railway Grade Crossing Fund" from which a contribution of any sum can be made towards this work. The city of Toronto, the Canadian National Railways and the Canadian Pacific Railway Company agree that the division between them should be as stated above. So far as the Toronto Transportation Commission are concerned, I think they should contribute ten per cent of the cost of this work.

The cost of maintenance shall be borne in the same proportions as the cost of the work.

The only matter which remains to be dealt with is the contribution, if any, to be made by the utility companies.

The question of the liability of public utility companies to contribute towards the cost of grade separations was argued at a sitting of the Board held in Ottawa on the 10th and 11th of May last. Although the Board has for the last twenty years at least consistently held that these companies should bear the cost of removing and replacing their utilities the point has been raised at almost every hearing called for the purpose of apportioning costs of grade separations.

The companies claimed that the question had never been really considered by the Board, that its decisions had been more or less perfunctory and not made with due consideration for the rights of the companies.

As a number of cases were on the docket for early hearing in each of which the point was raised, it was decided to have the question fully considered at a special sitting of the Board. All parties interested were notified and appeared by counsel, and the question was argued for one and a half days. Every possible contention both in favour of and against the companies being compelled to contribute was put forward and we have the benefit of that argument in deciding the present case.

The authority of the Board to order grade separations is contained in sections 255, 256 and 257 of the Railway Act, which give the Board very wide powers to order grade separations for the "protection, safety and convenience of the public". In many cases these involve the removal of utilities resulting in more or less financial loss to the owning companies.

At first the companies questioned the jurisdiction of the Board to order the removal of utilities, but this was decided against them by the Supreme Court of Canada in *The Bell Telephone Company v. Canadian National Railways*, 1932, S.C. 222.

The question now for consideration is whether this Board in directing companies to remove their utilities at their own expense, has been exercising a fair and reasonable judgment as between the parties. The case of the Bell Telephone Company may be taken as typical of them all.

This company was incorporated in 1880 by chapter 67 of 43 Vict. (Dom.). By section 3, subject to certain conditions, the company is given authority to "construct, erect and maintain its line or lines of telephone along the sides of and across or under any public highways, streets, etc."

When lines are placed underground, the conduits made of clay grouped together are laid on a concrete foundation and the whole surrounded by concrete. In complying with an order for removal the practice is to withdraw the cables at the manholes. The length of these cables is generally unsuited for the new location and a certain amount of loss is suffered in this way. The excavation

necessarily destroys the conduits and manholes which have to be replaced when the new grade is made. Apart from this, the companies are put to the expense of laying down a temporary service while the work of excavation is in progress.

The companies point out that orders for grade separations are made for the protection, safety and convenience of the public, that the companies neither contribute to the danger sought by such means to be avoided, nor obtain any benefits from such work. Finally, they rely very strongly on the contention that their conduits located beneath the highways, as well as poles and wires above ground, are interests in land which on ordinary principles of justice should not be taken or injuriously affected without compensation.

The case of the Corporation of the City of Toronto v. Consumers' Gas Company of Toronto, 1916, 2 A.C. 618, is relied on. There the city of Toronto in the exercise of their statutory powers had constructed a sewer under a street of which the freehold was vested in them. The construction made it necessary to lower a gas main laid by the Gas Company under power contained in their Act of Incorporation. The company declined to lower their gas main unless they were paid the cost of doing so. To avoid delay in the construction of the sewer it was arranged that the company should do the work necessary and that the city should pay to them, under protest, the cost incurred and bring an action to recover it. The payment was accordingly made and the action brought.

The two relevant sections of the Municipal Act, 1913, upon which the case turned, were 321(b) and 325, ss. 1.

Section 321(b) defines "Land" as including a right or interest in, and an easement over, land.

Section 325 provides as follows:—

"Where land is expropriated for the purposes of a corporation, or is injuriously affected by the exercise of any of the powers of a corporation or of the council thereof, under the authority of this Act the corporation shall make due compensation to the owner for the land expropriated, or where it is injuriously affected by the exercise of such powers for the damages necessarily resulting therefrom".

Lord Shaw of Dunfermline, delivering the judgment of their Lordships of the Privy Council, said at p. 621:—

"Once the pipes were laid by statutory authority, then they, in fact, became *partes soli*."

and again at p. 624.—

"The reasons have already been assigned for holding that the space occupied by the gas mains and the gas mains themselves of the respondents are of the nature of land in the ordinary sense. It must, however, be added that in any view the definition of 'land' in the Municipal Act unquestionably includes them for it can hardly be denied that the words 'a right or interest in, and an easement over, land' would embrace the right of the Gas Company to have their pipes remain and have the interest and use of them and the space occupied by them undisturbed;".

Lord Shaw quotes the remarks of Lord Watson in Metropolitan Railway Co. v. Fowler, 1893, A.C. 416, at p. 425. Dealing with the legal position in reference to a tunnel constructed by that railway company under part of the city of London, Lord Watson observed:—

"The tunnel has become *pars soli* in the strictest sense of the words. If it had been constructed by one who was proprietor *a centro usque ad cælum*, it would have passed, in the absence of exception, with his con-

veyance of land. As matters stand the owners of the soil, whoever these may be, are practically divested of interest in that part of it which has been converted into tunnel. They have no right to occupy or interfere with it in any way whatever; and their exclusion is not for a period limited, but for all time coming."

and in another portion of his judgment he said—

"I think the tunnel is as much 'land' as the highway itself or any other part of the soil beneath."

In *Montreal Light, Heat and Power Company v. City of Westmount*, 1926, S.C. 515, it was held by the Supreme Court of Canada that the pipes, poles, wires and transformers of the company were "immovables" within the meaning of that term as used in Article 5730 of the Cities and Towns Act, R.S.Q. 1909, and were subject to taxation as such.

This decision was approved by the Privy Council in *Montreal Light, Heat and Power Company v. Outremont*, 1932, 2 D.L.R. 305.

Applying the law laid down in the above cases it seems clear that the utilities of the companies constitute lands.

Both in England and in Canada where the railways are themselves, in the exercise of statutory powers given them, carrying out work which requires the removal of utilities, they are required to compensate the owner of such utilities. See *The Railways Clauses Consolidation Act, 1845*, 8 and 9 Vict., chapter 20, sections 18 to 23. See also the *Railway Act (Dom.)* sections 162-164.

Here, however, the work is not being done "for the purposes of the undertaking" of the railway and in pursuance of the powers given it by the statute, but in compliance with an order of the Board made for "the protection, safety and convenience of the public," and the duty is by section 39 of the *Railway Act* imposed on this Board of saying what, if any, amount the companies should contribute towards such a work.

The claim was made that certain sections of the *Railway Act* recognize the right of the companies to contribution, and reference was made to sections 162 (*n*), 163, 164, 255, 256 and 257. As already pointed out, the first three sections only apply in cases where the railway companies are themselves exercising powers given them by the Act and the question of compensation arises between them and the utility companies.

Now let us examine sections 255, 256 and 257. Section 255 of the *Railway Act*, as amended by chapter 36, *Statutes 1930 (Dom.)* section 2, provides that,—

"The railway of the company may, if leave therefor is first obtained from the Board, as hereinafter authorized, but shall not without such leave, be carried upon, along or across any existing highway."

upon certain conditions therein stated.

Section 256 provides that,—

"Upon any application for leave to construct a railway upon, along or across any highway, or to construct a highway along or across any railway."

the Board may, by order, grant such application in whole or in part and upon such terms and conditions as to protection, safety and convenience of the public as the Board deems expedient, or

"may order that the railway be carried over, under or along the highway, or that the highway be carried over, under or along the railway, or that the railway or highway be temporarily or permanently diverted, etc."

Subsection 3—

“When the application is for the construction of the railway, *upon, along or across* a highway, all the provisions of law at such time applicable to the taking of land by the company to its valuation and sale and conveyance to the company, and to the compensation therefor, including compensation to be paid to adjacent or abutting landowners as provided by the last preceding section, shall apply to the land exclusive of the highway crossing, required for the proper carrying out of any order made by the Board.”

Now section 257 deals with the “powers of the Board as to *existing crossings*” as the marginal note, as well as the section itself, clearly shows. This section reads:—

“Where a railway is *already constructed* upon, along or across any highway, the Board may, of its own motion, or upon complaint or application, by or on behalf of the Crown, or any municipal or other corporation, or any person aggrieved make such order as to the protection, safety and convenience of the public as it deems expedient or may order that the railway be carried *over, under or along* the highway or that the highway be carried *over, under or along* the railway, or that the railway or highway be *temporarily or permanently diverted*”

“2. When the Board makes any order that a railway be carried *across or along* a highway or that a railway be *diverted*, all the provisions of law at such time applicable to the taking of land by the company, to its valuation and sale and conveyance to the company, and to the compensation therefor, shall apply to the land, exclusive of the highway crossing, required for the proper carrying out of any order made by the Board.”

For all present purposes we are considering cases having to do with existing crossings and are only concerned with the meaning of section 257. The first part of the section provides for the railway being carried over, under or along the highway or the highway being carried over, under or along the railway, or the railway or highway being temporarily or permanently diverted.

Subsection 2 refers only to the case of a railway being carried *across or along* a highway or *being diverted*.

In the case of the railway being carried over or under the highway or the highway being carried over or under the railway, there is no provision for incorporating the provisions of the Act relating to the taking of lands.

It would appear, therefore, that the companies cannot claim compensation under this section.

Section 39, however, gives the Board ample jurisdiction in the matter of giving compensation to persons interested or affected. Section 39 reads in part as follows:—

“39 (1) When the Board, in the exercise of any power vested in it, in and by any order directs or permits any structure appliances, equipment, works, renewals or repairs to be provided, constructed, reconstructed, altered, installed, operated, used or maintained, it may, except as otherwise expressly provided, order by what company, municipality or person, interested or affected by such order, as the case may be, and when or within what time and upon what terms and conditions as to the payment of compensation or otherwise, and under what supervision, the same shall be provided, constructed, reconstructed, altered, installed, operated, used and maintained.”

"(2) The Board may, except as otherwise expressly provided, order by whom, in what proportion, and when, the cost and expenses of providing, constructing, reconstructing, altering, installing, and executing such structures, equipment, works, renewals, or repairs, or of the supervision, if any, or of the continued operation, use or maintenance thereof, or of otherwise complying with such order, shall be paid."

It was expressly stated in the case of *The Bell Telephone Company v. The Canadian National Railways*, 1932 S.C. 222, "that section 39 gives ample scope to the Board for making such provisions as to time, terms, conditions, and "as to the payment of compensation or otherwise," as may be found necessary to meet all situations, and for clothing the orders it makes under it with all the guarantees of fairness." Rinfret, J., p. 236.

The universal principle of law is that where private property is taken or injuriously affected, in the carrying out of works authorized by Parliament, the owner must be compensated. It would not be consistent with common justice to hold that the party so injured should not be entitled to compensation.

Why should not the companies in the present case be compensated?

I have listened with care to the several reasons advanced by counsel for refusing compensation, but I must confess that none of them was in the slightest degree convincing. Mr. Flintoft put the matter in this way:—

He said:

"When the public utilities get on the highways without compensation, and are given a free right of way, it is one of the incidents of that occupation of the highway that they shall be made to conform to altered conditions which are brought about, not on account of any fault of the railway company or the municipality, but from the paramount consideration of public safety and convenience."

and again:—

"It seems to me that where you have a utility that is enjoying a right of way on a highway without expense, the right of way that it uses to earn its profits, there is nothing unfair in saying to that utility: Here a situation has developed which requires certain measures to be taken for the protection, safety and convenience of the public, you are there, you are an obstacle to the carrying out of that work. Now as one of the incidents of this occupation of the highway by you you should bear the cost of any changes in your plant."

Mr. Mason, who appeared for the city of Hamilton, summarized his reasons as follows:—

"The difference between the private interest and the public interest in the highway lies in four factors—

(1) In the nature of the interest. The interest of the utility company is merely at best an easement in public property.

(2) It differs in the origin of the interest. My submission is that the reason you have these public utilities in the highway is not for the aggrandisement of the company but for the public good, and that when we consider the position of the public utilities we must consider their origin, that is they are there to serve the public good.

(3) A private owner has his property not on the public street, it is entirely his own, while in this case the property is on the public highway, which is vested in the municipality.

(4) There is a difference in the circumstances in which the property or interest may be affected. I quite concede, as Mr. Geary said, that if this was a matter between the municipality on the one hand and the Con-

sumers' Gas Company on the other, where they have something in the nature of an agreement or legislative bargain, they have to be controlled by the terms of the bargain. That is not the position here. The position here is that we are subject to the paramount authority of this Board, and being subject, different considerations apply, because the function of this Board is to protect the interests of the public, and matters of private concern have to go by the Board.

"May I put this in one sentence before I leave this branch? I say in a word that these public utilities have been permitted for the public good to go on the public highway without payment of consideration; and similarly for the public good they should be obliged to move, if necessity requires, without compensation."

The reasons suggested for depriving the companies of their property without compensation boiled down amount to this: "You are in the highways, you have paid nothing for the privilege; it is in the public interests that you should move without compensation."

When legislation authorizing the location of utilities in the public highways was being sought, it would doubtless have been prudent on the part of municipalities to have insisted on a condition that, when required, the companies should move their utilities at their own expense. This, however, was not done and the companies were allowed to secure an indefeasible title in a portion of the highway itself. Whether they paid for it or not makes no difference. The municipalities now say, we admit that you have such a title, but in the public interest we think you should relinquish it without remuneration. I can see no justification in these circumstances for breaking away from the uniform rule that where private property is required for public purposes it must be paid for.

If the matter were *res integra* I would have no hesitation in holding that the companies should be compensated. The fact is, however, that the Board has held in numerous cases during the past twenty years that the companies should move their utilities at their own expense. I have no doubt that many of the subways recently completed, or now in the course of construction, have been started relying to some extent on the Board's adherence to this ruling. The matter after all is not one of law but of a reasonable exercise of discretion and, under the circumstances, I feel that I should follow the practice so long established.

Subways under the tracks of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian Pacific Railway Company, and the Brampton Subdivision of the Canadian National Railways at Bloor Street and Royce Avenue; and the Canadian National Railways' Newmarket Subdivision on Bloor Street.

This application has to do with maintenance only.

By Order No. 35153, dated June 5, 1924, the two railway companies were authorized to construct these subways.

By Order No. 38424, dated November 15, 1926, the costs of construction were distributed as follows: The Toronto Transportation Commission ten per cent; the city of Toronto forty-five per cent and the two railway companies forty-five per cent.

Both the railway companies and the city of Toronto claim that the cost of maintenance should be borne in like proportions. The Toronto Transportation Commission protest against being made to pay any portion of the cost of maintenance.

So far as the Bloor Street subways are concerned, I think the Toronto Transportation Commission should pay ten per cent of the cost of maintenance.

The Toronto Transportation Commission have never constructed tracks through the Royce Avenue subway. In constructing this subway it was found necessary to make a rather extensive diversion of Dundas street in order to remove the tracks of the Toronto Transportation Commission from the approaches to the subway. No doubt, for this reason, the Board ordered the Toronto Transportation Commission to pay ten per cent of the cost of construction. I am unable to find any reason for ordering that the Toronto Transportation Commission should pay any portion of the cost of maintenance of a subway that they are not using. No order, will, therefore, be made against them in respect of the maintenance of this subway.

The result is that the cost of maintenance of this subway will be borne fifty per cent by the two railway companies and fifty per cent by the city of Toronto.

Subway under the tracks of the Canadian National Railways' Newmarket Subdivision at St. Clair Avenue West, Toronto

The order authorizing the construction of this subway is dated January 8, 1931, is numbered 46083, and was made on the application of the Canadian National Railways.

This order required the Bell Telephone Company of Canada, the Toronto Hydro-Electric System, the Consumers' Gas Company and the Hydro-Electric Power Commission of Ontario to move such of their facilities as might be affected by the construction of the said subway, when requested to do so by the chief engineer of the applicants.

Mr. Fraser on behalf of the Canadian National Railways asks that the costs of construction be distributed ten per cent to the Toronto Transportation Commission, forty-five per cent to the city of Toronto and forty-five per cent to the railway company.

The city agrees to this distribution, but the Toronto Transportation Commission object to paying any portion of the cost of construction. The Toronto Transportation Commission are operating their cars through this subway and, following the usual practice, should pay ten per cent of the cost of construction.

The cost of maintenance of this subway shall be borne ten per cent by the Toronto Transportation Commission, forty-five per cent by the Canadian National Railways and forty-five per cent by the city of Toronto.

With the exception of the Hydro-Electric Power Commission of Ontario, the utility companies will themselves bear the cost of the changes in their facilities.

In constructing the subway it was found that if the railway were moved to the west, it would cheapen materially the cost of construction. This involved the diversion of the power line of the Hydro-Electric Power Commission of Ontario, and it was agreed between the parties concerned that the costs of this diversion should be paid to the Commission and the amount included in the cost of the subway.

C. P. FULLERTON.

OTTAWA, May 25, 1932.

I am of opinion that the existing practice should be continued, and therefore agree in the result.

S. J. McLEAN.

I agree,

T. C. NORRIS.

I am in accord with the principle as contained in the judgment, therefore agree.

G. A. STONE.

I agree,

J. A. STONEMAN.

I concur in the above judgment of the Honourable Chief Commissioner.

I believe that the usual practice of this Board regarding grade separations should be continued. However, I make the distinction that when a company of public utilities has paid a price, compensation or indemnity to acquire its rights and privileges, then those special cases should be respectively dealt with by the Board.

F. A. LABELLE.

ORDER No. 48682

In the matter of the Order of the Board No. 46530, dated April 8, 1931, as amended by Order No. 46642, dated May 12, 1931, authorizing the Canadian National Railways to construct a subway under the tracks of their Brampton Subdivision, and under the tracks of the Canadian Pacific Railway Company, on St. Clair avenue, in the City of Toronto; directing the Bell Telephone Company of Canada, the Toronto Hydro Electric System, and the Consumers' Gas Company of Toronto to move such of their facilities as may be affected by the construction of the said subway, when requested to do so by the Chief Engineer of the Canadian National Railways; and reserving the question of cost for further consideration;

And in the matter of the application of the Canadian National Railways and the Canadian Pacific Railway Company for an Order apportioning the cost of the said subway.

Case No. 1353

SATURDAY, the 28th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, April 27, 1932, in the presence of counsel for the said railway companies, the Bell Telephone Company of Canada, the Consumers' Gas Company of Toronto, the City of Toronto, and the Toronto Transportation Commission, and what was alleged, the city and the railway companies consenting—

The Board orders:

1. That the cost of constructing and maintaining the said subway under the tracks of the Canadian National Railways and the Canadian Pacific Railway Company on St. Clair avenue, in the city of Toronto and province of Ontario, be borne and paid as follows, namely: forty-five per cent by the Canadian National Railways and the Canadian Pacific Railway Company, forty-five per cent by the city of Toronto, and ten per cent by the Toronto Transportation Commission.

2. That the Bell Telephone Company of Canada, the Toronto Hydro-Electric System, and the Consumers' Gas Company of Toronto bear and pay the cost of

moving such of their facilities as may be affected by the construction of the said subway, and of maintaining their wires, pipes, and other plant at the point in question.

3. That any payments made by the said the Consumers' Gas Company of Toronto be without prejudice to its rights, if any, over against the city of Toronto.

4. That the city of Toronto maintain, at its own expense, its roads and sidewalks, and the Canadian National Railways and the Canadian Pacific Railway Company their ballast, ties, rails, fastenings, and tracks.

5. That the Toronto Transportation Commission maintain, at its own expense, its tracks and overhead construction.

6. That interest, at the rate of five per cent per annum, be paid by the Canadian Pacific Railway Company, the Toronto Transportation Commission, and the city of Toronto to the Canadian National Railways on their share of the construction costs of the said subway, from the dates of expenditure to the date of payment.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48685

In the matter of the Orders of the Board Nos. 35153, 35308, 36737, 36738, 37239, and 36693, dated respectively June 5, 1924, July 10, 1924, August 22, 1925, August 21, 1925, January 15, 1926, and August 13, 1925, authorizing the construction of three subways: one under the tracks of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian Pacific Railway Company and the Brampton Subdivision of the Canadian National Railways at Bloor street; one under the tracks of the Canadian Pacific and the Canadian National Railways on Royce avenue; and one under the tracks of the Canadian National Railways' Newmarket Subdivision on Bloor street—all in the City of Toronto and Province of Ontario; and Order No. 40367, dated February 16, 1928, making a contribution of certain payments out of "The Railway Grade Crossing Fund" towards the cost of the said work; and apportioning the remainder of such cost, including interest at the rate of 5 per cent per annum thereon from the dates of expenditure to the date of payment, fifty per cent to the City of Toronto and fifty per cent to the Railway Companies;

And in the matter of the application of the Canadian Pacific Railway Company and the Canadian National Railways for an Order dividing the cost of maintaining the said subways.

Files 32453 and 32453.6

SATURDAY, the 28th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, April 27, 1932, in the presence of counsel for the said railway companies, the Toronto Transportation Commission, the city of Toronto, the Consumers' Gas Company of Toronto, the Bell Telephone Company of Canada, and the Hydro-Electric Power Commission of Ontario, and what was alleged,—

The Board orders:

1. That the cost of maintaining the said subway under the tracks of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian

Pacific Railway Company and the Brampton Subdivision of the Canadian National Railways at Bloor street, in the city of Toronto, and province of Ontario, be borne and paid as follows, namely: ten per cent by the Toronto Transportation Commission, forty-five per cent by the city of Toronto, and forty-five per cent by the railway companies.

2. That the cost of maintaining the said subway under the tracks of the Canadian National Railways' Newmarket Subdivision on Bloor street, in the city of Toronto, and province of Ontario, be borne and paid as follows, namely: ten per cent by the Toronto Transportation Commission, forty-five per cent by the city of Toronto, and forty-five per cent by the Canadian National Railways.

3. That the cost of maintaining the said subway under the tracks of the Canadian Pacific Railway Company and the Canadian National Railways on Royce avenue, in the city of Toronto and province of Ontario, be borne and paid as follows, namely: fifty per cent by the city of Toronto and fifty per cent by the railway companies.

4. That the city of Toronto maintain, at its own expense, its roads and sidewalks, and the Canadian Pacific Railway Company and the Canadian National Railways their ballast, ties, rails, fastenings, and tracks.

5. That the Toronto Transportation Commission maintain, at its own expense, its tracks and overhead construction.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48686

In the matter of the Order of the Board No. 46083, dated January 8, 1931, authorizing the Canadian National Railways to construct a subway under their tracks where they cross St. Clair avenue, in the City of Toronto, and Province of Ontario, and to divert the main line of the railway to the west; directing the Bell Telephone Company of Canada, the Toronto Hydro-Electric System, the Consumers' Gas Company of Toronto, and the Hydro-Electric Power Commission of Ontario to move such of their facilities as may be affected by the construction of the said subway, when requested to do so by the Chief Engineer of the Canadian National Railways; and reserving the question of the cost for further consideration;

And in the matter of the application of the Canadian National Railways for an Order distributing the cost of the said subway.

File No. 32453.11

SATURDAY, the 28th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., Chief Commissioner.

S. J. McLEAN, Assistant Chief Commissioner.

Hon. T. C. NORRIS, Commissioner

Upon hearing the matter at the sittings of the Board held in Toronto, April 27, 1932, in the presence of counsel for the said railway company, the City of Toronto, the Toronto Transportation Commission, the Hydro-Electric Power Commission of Ontario, the Consumers' Gas Company of Toronto, and the Bell Telephone Company of Canada, and what was alleged, the city consenting,—

The Board orders:

1. That the cost of constructing and maintaining the said subway under the tracks of the Canadian National Railways on St. Clair avenue, in the city of Toronto, and province of Ontario, be borne and paid as follows, namely: forty-five per cent by the Canadian National Railways, forty-five per cent by the city of Toronto, and ten per cent by the Toronto Transportation Commission.

2. That the Bell Telephone Company of Canada, the Toronto Hydro-Electric System, and the Consumers' Gas Company of Toronto bear and pay the cost of moving such of their facilities as may be affected by the construction of the said subway, and of maintaining their wires, pipes, and other plant at the point in question.

3. That the cost of the diversion of the power line of the Hydro-Electric Power Commission of Ontario shall form part of the general costs of the subway, and shall be paid by the parties in the proportions provided for in paragraph 1 of this order.

4. That any payments made by the said the Consumers' Gas Company of Toronto be without prejudice to its rights, if any, over against the city of Toronto.

5. That the city of Toronto maintain, at its own expense, its roads and sidewalks, and the Canadian National Railways their ballast, ties, rails, fastenings, and tracks.

6. That the Toronto Transportation Commission maintain, at its own expense, its tracks and overhead construction.

7. That interest, at the rate of five per cent per annum, be paid by the Toronto Transportation Commission and the city of Toronto to the Canadian National Railways on their share of the construction costs of the said subway from the dates of expenditure to the date of payment.

C. P. FULLERTON,

Chief Commissioner.

Consideration of the question of the Apportionment of the cost of the Subway directed to be constructed by the Canadian National Railways under the tracks of that Company at Canardiere Road in the City of Quebec (Limoilou Ward, Que.), reserved by paragraph 2 of Order No. 45502, dated September 29, 1930.

(File No. 29373.)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This is an application for the apportionment of the cost of the above subway reserved by Order No. 45502 dated September 29, 1930, authorizing its construction.

The main difficulty is to determine the amount which the Quebec Railway, Light and Power Company, hereinafter called the "Company," should contribute to the cost of this subway.

Mr. Chapleau, who appeared for the city of Quebec, claimed that the company should pay one-third of the cost. He relies on an agreement entered into between the city and the company on November 25, 1919, which contains a provision requiring the company to construct a subway at the point where the present subway is constructed, and to pay one-third of the cost of the same. Mr. Paul Taschereau, who appeared for the company, admits the execution of the agreement, but claims that it was subsequently rescinded. He says, first, that the contract was rescinded by the renewal of the company's charter in 1925.

It appears that in 1919 the company was operating under a charter obtained from the city in 1895, which was to expire in 1925. In 1925 the city of Quebec renewed the company's charter. I have carefully examined the terms of this charter which is contained in an agreement entered into between the parties, dated 4th day of March, 1925, but I can find no reference in it to the agreement of 1919.

Mr. Taschereau appeared to think that the very fact of the city renewing the company's charter had the effect of cancelling the agreement of 1919, but I fail to understand on what principle such a result could have been brought about.

Mr. Taschereau further contended that the company in 1924 constructed an interlocker at the crossing in question, which was accepted by the city in lieu of the subway. I was at first inclined to think that there was some substance in this contention but, after consideration, have arrived at the conclusion that there is nothing in the evidence to support it.

The Board's files give a pretty accurate history of the negotiations leading up to the construction of the subway. In 1919 the company was operating a system of tramways in the city of Quebec. They also had a line running along the north shore of the St. Lawrence from the city of Quebec to Beauport, where the line branched, one branch going to Montmorency Falls and one to Ste. Anne de Beauport. A new tram line running from the city of Quebec to Beauport, northwest of this line, was at the time projected, and by the agreement above referred to the company in consideration of increased fares agreed that—

"6. The said increase is granted also on the explicit condition that the company shall fulfil the obligations which it contracted with the City of Quebec, namely, that the tramway service from Beauport be in operation on November 15, instant (1919);

"7. That the company undertakes to construct a subway at Beauport road, in order to cross with its line the line of the Canadian Northern Railway, the company agreeing to pay at least one-third of the cost of the said subway."

It may be here mentioned that Beauport road is the highway now called Canardiere road.

On August 21, 1919, the company wrote to the Board stating that it was extending its electric street railway along the Beauport road, necessitating crossing the double track main line of the Canadian Northern Railway Company and inquiring as to the protection that would be required.

On September 3, 1919, the company again wrote the Board saying that it was considering the feasibility of passing under the Canadian Northern Railway with its electric line.

On May 26, 1920, the company again wrote the Board advising that it had recently completed the construction of a street railway extension on Beauport road as far as the city limits, and adding that "due to the many disadvantages and dangers to life and property at level crossings it is proposed to construct a subway under the above-mentioned tracks."

On June 7, 1920, the company advised the Board that plans for the subway were being prepared.

On September 20, 1922, the Board's Engineer inspected the proposed crossing and reported that "in view of the difficulty of providing satisfactory drainage and the excessive cost, the subway proposition was impracticable."

At a meeting of the Board held in Quebec city on September 6, 1922, the Citizens' Association of Limoilou made an application to compel the company to complete the crossing over the Canadian National Railway (Canadian Northern Railway).

Mr. Gravel, who appeared for the company at that hearing, opposed a level crossing pointing out the dangers involved, and in the course of the hearing he stated that—

"The Quebec Railway is under a contract to pay one-third of the cost of that subway."

He was asked by the Chief Commissioner—

“Supposing a subway was decided upon, what is your position as to the cost of construction?”

His answer was—

“We would submit this, that the city of Quebec should go ahead, build the subway, and we are bound to pay one-third; the Canadian National Railways could pay one-third and the city the third share. I think that would be an equitable solution.”

On the 8th day of January, 1923, an order was made authorizing the company to construct its tracks across the tracks of the Canadian National Railways at Beauport road, Limoilou Ward, in the city of Quebec, to be protected by a half-interlocking plant. Upon the application of the company, an order dated December 29, 1923, was made by the Board authorizing the company to operate its cars over the crossing pending the installation of the interlocker. The company delayed installing the interlocker giving as a reason for the delay, that the subway was still under discussion.

On October 6th, 1924, the Board made an order making the company liable to a penalty of \$25 a day for every day it was in default after the 15th day of December, 1924, in the completion of the work of installing the interlocking plant. Notwithstanding the above order, the company neglected to complete the interlocker giving from time to time the excuse, that a subway was still under consideration. Only after notice had been given by the Board on the 16th day of February, 1925, requiring the company to show cause why action should not be taken to make the order of October 6, 1924, a rule of court and proceedings taken to enforce the penalty prescribed by the order were steps taken by the company to install the interlocker. The interlocker was completed and put in operation in September, 1925. It cost about \$30,000, \$7,633 of this amount being paid from the Railway Grade Crossing Fund, \$10,000 by the city of Quebec, and the balance by the company.

In June, 1929, application was made to the Board by the municipality of Giffard for the construction of a subway, which was ordered on September 29, 1930.

There is nothing either in the evidence submitted to us, or in the history of the case, to support the position that the interlocker was accepted by the city in satisfaction of the obligations of the company to contribute at least one-third of the cost of a subway. As I have already pointed out, the company was compelled to construct the interlocker by order of this Board.

When the 1919 agreement was made both parties to the agreement knew that the charter expired in 1925. The consideration for the agreement by the company to contribute to the subway was the increase in fares which the city was giving the company. The fares were increased and the company got the benefit of this increase from the date of the agreement. I hold that the agreement is in full force and effect, and the company is bound by that agreement as between itself and the city of Quebec to contribute one-third of the cost of the subway.

As to the remaining two-thirds of the cost, the Canadian National Railways are prepared to share this equally with the city of Quebec. The city of Quebec, however, contends that the Canadian National Railways should bear a larger portion of the two-thirds by reason of the provision made in the construction of the subway for the carrying of additional tracks.

Before the subway was constructed the railway company had two tracks across the road. The bridge spanning the street, as depressed, was made wide enough for three tracks and the concrete abutments were extended so that three additional tracks can be extended across the street merely by constructing the

spans. The barrel of the subway has been made three times as long as necessary to provide for the two existing tracks. If the railway company had been senior to the highway, I can see how it could fairly claim that the extra cost involved in the construction of the subway so as to make provision for six tracks, should be shared by the other parties, but as a matter of fact this road was in existence a long time prior to the construction of the railway and the latter merely has an easement across the highway.

A case somewhat parallel to this is the recent elevation of the Toronto, Hamilton and Buffalo Railway Company's tracks in Hamilton, Ont., where that railway company provided a number of additional tracks over and above what it had before the work of grade separation was begun, and considered it fair that the city should pay only for the grade separation of the existing tracks.

I am, therefore, of opinion that the city of Quebec and the company should share only in the cost of the subway sufficient to take care of the tracks existing before the work was started, and that the Canadian National Railways should pay the additional cost of the subway necessitated by the provision made for six tracks instead of two.

In the result, the company and the city will each bear one-third of the cost of a subway sufficient to accommodate two tracks, and the Canadian National Railways will bear the balance.

The Canadian National Railways will bear the whole cost of maintenance of the portion of the subway designed to accommodate the four additional tracks, and the maintenance of the remaining portion of the subway shall be borne ten per cent by the company, forty-five per cent by the railway company and forty-five per cent by the city.

There is another point which may as well be settled now. Before the subway was built the travelled portion of Canardiere road consisted of a light asphalt covering over an old macadamized road. The new permanent road through the subway consists of an asphalt covering over a concrete base, which constitutes an improvement for which the city should pay subject to whatever agreement it may have with the company.

Following the recent decision in the Toronto Northwest Grade Separation Cases, the Bell Telephone Company and the Quebec Power Company will each bear the cost of removing their respective facilities with this exception, that the Canadian National Railways shall pay the Bell Telephone Company the additional cost incurred by the latter by reason of the construction of the subway to accommodate the four additional tracks.

OTTAWA, May 30, 1932.

Deputy Chief Commissioner Labelle and Commissioner Norris concurred.

ORDER No. 48691

In the matter of the Order of the Board No. 45502, dated September 29, 1930, made upon the application of the City of Quebec, directing the Canadian National Railways to construct a subway under their tracks at Canardiere (Beauport) Road, in the City of Quebec (Limouilou Ward) and Province of Quebec, and reserving the question of the apportionment of the cost for further consideration; and Order No. 46045, dated January 3, 1931, directing the Bell Telephone Company of Canada to move such of its utilities as may be affected by the construction of the said subway, as and when requested to do so by the Chief Engineer, Operating Department, of the Canadian National Railways, or by the Chief Engineer of the City of Quebec; and providing, inter alia, that the cost of moving the said utilities shall be, and be taken to be and form, part of the general cost of construction of the said subway to be distributed by the Board;

And in the matter of the application of the Canadian National Railways for an Order apportioning the said cost.

File No. 29373

WEDNESDAY, the 1st day of June, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, May 12, 1932, in the presence of counsel for the Canadian National Railways, the City of Quebec, the Quebec Railway, Light and Power Company, the Quebec Power Company, and the Bell Telephone Company of Canada, the evidence adduced, and what was alleged,—

The Board orders:

1. That the cost of constructing the said subway under the tracks of the Canadian National Railways at La Canardiere (formerly Beauport) road, in the city of Quebec (Limouilou Ward) and province of Quebec, be borne and paid as follows, namely: one-third each by the Quebec Railway, Light and Power Company and the city of Quebec of the cost of a subway sufficient to accommodate two of the six tracks provided for, and the remainder by the Canadian National Railways.

2. That the construction of the pavement and sidewalks up to the standard of the existing pavement and sidewalks form a part of the cost of the whole work; and that the cost thereof be borne and paid one-third by the Canadian National Railways, one-third by the Quebec Railway, Light and Power Company, and one-third by the city of Quebec, but that the cost of any improvement over the existing standard be paid wholly by the said city, subject to whatever agreement it may have with the Quebec Railway, Light and Power Company with regard to the said pavement and sidewalks.

3. That the whole cost of maintaining that portion of the said subway designed to accommodate the four additional tracks be borne and paid by the Canadian National Railways; and that the maintenance of the remaining portion of the subway be borne and paid ten per cent by the Quebec Railway, Light and Power Company, forty-five per cent by the Canadian National Railways, and forty-five per cent by the city of Quebec.

4. That the Bell Telephone Company of Canada and the Quebec Railway, Light and Power Company each bear and pay the cost of removing their respective facilities affected by the construction of the said subway: Provided, however, that the Canadian National Railways shall pay to the Bell Telephone

Company of Canada the additional cost incurred by the said the Bell Telephone Company of Canada by reason of the construction of the subway to accommodate the four additional tracks.

C. P. FULLERTON,
Chief Commissioner.

Application of the Municipal Council of the Municipality of the Township of Campbell, P.Q., for an Order directing the Canadian Pacific Railway Company to move its station at Brunet, P.Q., from its present location to a point near the crossing at Mileage 134.4, Ste. Agathe Subdivision.

File 38176

JUDGMENT

LABELLE, DEPUTY CHIEF COMMISSIONER:

This is an application from the Municipal Council of the Township of Campbell, in the county of Labelle, for an order requiring the Canadian Pacific Railway Company to move its present station at Brunet, county of Labelle, a distance of about 2,000 feet to a new location some 200 feet west of the railway crossing, at mileage 134.4, St. Agathe Subdivision, or to build a new station at that point.

Mr. G. Viger and his son, P. Viger, are opposed to the removal of the station from its present site and they have submitted petitions to the Board to this effect, which petitions are also signed by several others.

An inspection in this matter was made by one of the Board's inspectors, Mr. J. A. LaFontaine, who reported in favour of the proposed location, but as the Board, in view of the financial condition of the railways, was reluctant to issue an order directing the Canadian Pacific Railway Company to spend the amount estimated to be incurred for this work, it was decided that some members of the Board go over the ground personally before a decision was reached.

On May 14, 1932, after due notice having been given to the interested parties, the Chief Commissioner, Honourable C. P. Fullerton, and myself, inspected the present and proposed locations and heard the interested parties. There were present: Mr. Savage, General Superintendent, and Mr. O. M. Lavoie, Superintendent of St. Agathe Subdivision, representing the Canadian Pacific Railway Company; Mr. E. Forget, Mayor; Mr. S. Pellerin, Secretary-Treasurer, and Mr. A. Massé, Councillor, for the municipality; Messrs. G. and P. Viger and Messrs. G. and H. Sabourin, and others.

The present station at Brunet is an old box-car which has been remodeled and divided in two; one part being used as waiting room and the other as a shed for storage. It is situated at a cross-road and faces a saw-mill, the property of G. Viger. There is a siding serving this saw-mill. Near the mill are three houses also owned by Mr. Viger, one of which is occupied by Mr. Viger, Jr., and the other two are rented.

The approaches to the station are very poor; in fact, there is no place to turn a car unless it is directed on to the station platform and then backed down to a narrow road. The land is swampy and, during the spring and fall or after rains, the muddy ground makes it hard to approach the station.

Brunet station was located on the present site because it was then the only business center and in proximity to the Viger saw-mill which, at the time, did a large amount of business. At present, however, it is not in operation, but there is a balance of some lumber remaining to be shipped and a car is loaded occasionally. There seems to be no prospect of the mill resuming operations as the timber limits in the vicinity are practically exhausted.

Furthermore, due to the topographical condition at the point of the present station, there is very little possibility of much development taking place near the present station.

The proposed location is at about 200 feet west of the railway crossing, south of the Post Office, as shown on the sketch made by Inspector LaFontaine. It appears most suitable for the erection of a new station, being at the junction of the main road leading to the lake where there are several cottages occupied by summer residents or rented to tourists, and also the "Red Pine Inn," a well-known and popular hotel. There are also several farms in the vicinity. The ground at this point is dry and a station erected at this site would be more quickly and conveniently reached by a greater number of residents of the locality.

It seems plausible that any future development will continue to extend along the main road leading to the hotel, the cottages and the surrounding farms.

As it will not be necessary to remove the siding now serving more especially the saw-mill owned by Mr. Viger, his objection to the removal of the station does not seem justified.

I have been given to understand that arrangements have been made which will make it possible to have the change of location effected at very little expense to the railway company.

Therefore, I think it would be in the general interest to grant the application of the Municipal Council of the Township of Campbell and issue an order directing the Canadian Pacific Railway Company to remove Brunet Station from its present site and relocate it at the point selected, i.e., 200 feet west of the crossing at mileage 134.4, this change to be effected as soon as the railway company may conveniently do so.

OTTAWA, May 31, 1932.

The Chief Commissioner agreed.

ORDER No. 48696

In the matter of the application of the Council of the Municipality of the Township of Campbell, in the County of Labelle and Province of Quebec, hereinafter called the "Applicant," for an Order directing the Canadian Pacific Railway Company to move its station at Brunet, Quebec, from its present location to a point near the crossing of the highway at mileage 134.4 Ste. Agathe Subdivision.

File No. 38176

THURSDAY, the 2nd day of June, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of the railway company; and upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed, as soon as it may conveniently do so, to move the station building at Brunet, in the province of Quebec, from its present site to a point about two hundred feet west of the highway crossing at mileage 134.4 Ste. Agathe Subdivision.

C. P. FULLERTON,
Chief Commissioner.

Consideration of the question of the apportionment of the cost of constructing and maintaining the subway under the tracks of the Pere Marquette Railway and the Lake Erie and Detroit River Railway Companies, on the proposed extension of Wyandotte Street, Walkerville, Ont., authorized by Order No. 45155, dated August 2, 1930.

File 27929.40

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of May 23, 1930, there was addressed to the Board by the Corporation of the Town of Walkerville an application for an order, under section 256 of the Railway Act, directing the Pere Marquette Railway Company and the Lake Erie and Detroit River Railway Company to provide and construct a suitable crossing, at grade level, where the railway of those companies intersects Wyandotte street, as extended easterly from Walker road to Montreuil avenue, in the town of Walkerville. It was claimed that the crossing at grade level asked for was necessary before said Wyandotte street could be opened to the public.

According to the application, copy of same was sent to the City of East Windsor, the Pere Marquette and Lake Erie and Detroit River Railway Companies, and the Hydro-Electric Power Commission. The answer of the Pere Marquette and Lake Erie and Detroit River Railway Companies favoured separation of grades; at the same time emphasizing their position that in the event of this being granted, the applicant should pay all cost of the work.

On consideration of the report of the Board's Chief Engineer, which favoured a grade separation, copy of this report went forward to the representatives of the Municipal Corporation of the Town of Walkerville, City of East Windsor, the Pere Marquette and Lake Erie and Detroit River Railway Companies, and the Hydro-Electric Power Commission; and they were asked to show cause why an order for a subway and provision for distribution of cost as set out in the Chief Engineer's report should not be made. Thereafter, on reading the submissions filed, Order No. 45155, of August 2, 1930, issued authorizing the town of Walkerville to construct a subway under the tracks of the Pere Marquette and Lake Erie and Detroit River Railway Companies at the point already referred to. The order further provided that the question of apportionment of cost of construction and maintenance of the said subway should be reserved for further consideration.

Subsequently, as a result of correspondence of the town of Walkerville with Messrs. Long & Daly, their bond house solicitors at Toronto, a question arose in connection with the orders and by-laws. It was suggested that the order issued by the Board was a permissive one and, therefore, no portion of cost from the Pere Marquette Railway could be ordered. Under date of March 26, 1931, the Board stated that "while not subscribing to the view that an order has to be mandatory to enable the Board to apportion any part of the cost against the Pere Marquette," it had no objection to inserting the words "and directed" in the order after the word "authorized" in the original order. Thereafter amending Order No. 46471, of March 27, 1931, issued authorizing the word "and directed" to be added after the word "authorized" in the original order; thus setting at rest any question that turned on the alleged permissive nature of the order.

The cost of the work is estimated at \$389,000. By order No. 48397, of April 7, 1932, provision was made that 40 per cent of the cost of constructing the subway was to be paid out of the Grade Crossing Fund from the amount paid to this fund for the relief of unemployment, such payment not to exceed the sum of \$100,000.

In Exhibit 20, which is By-law No. 992 of the city of East Windsor and dated November 13, 1930, reference is made to an agreement, in writing, dated January 28, 1930, between the town of Walkerville and the city of East Windsor, whereunder the town of Walkerville was to make an application for a level crossing of the proposed extension of Wyandotte street over the Pere Marquette Railway right of way. Attached to the by-law is a copy of the agreement in question.

The town of Walkerville holds itself bound, under an agreement of November 12, 1930, between the same parties, to meet the burden of whatever sum, if any, the Board shall regard as properly chargeable against the city of East Windsor in respect of the subway.

The Pere Marquette and Lake Erie and Detroit River Railway Companies, while asserting their position under the senior and junior rule, state that in the first instance, as there were some advantages to them arising from the subway, they had offered to contribute the sum of \$10,000; that the cost of certain rearrangements which had to be made would bring the sum to about \$8,000.

There is no dispute as to the seniority of the Pere Marquette at the point in question. The matter which has to be decided is whether, on the facts and under the decisions, there is justification and power for disregarding the rigid application of the senior and junior rule.

In *Municipalities of Ste. Anne de Bellevue and Senneville vs. G. T. and C.P. Ry. Cos.*, 16 *Can. Ry. Cas.*, 250, the majority of the Board held that in apportioning the cost of separation of grades the amount of traffic on the highway and railway respectively are more important factors than the question of seniority, and the senior and junior rule should not be given as much weight as in the case of one railway crossing another. There were two subways involved—one crossing the Grand Trunk, the other the Canadian Pacific. In the decision rendered by the then Assistant Chief Commissioner, 70 per cent of the cost of each subway was, subject to a contribution of 20 per cent from the Grade Crossing Fund, imposed on the railway in each case. My dissenting judgment did not disagree with dealing with the matter on the particular facts of each case; and my judgment held that 55 per cent was to be imposed upon the railway.

In the *City of Toronto vs. Canadian Pacific Railway Company-Symington Avenue Case*, 19 *Can. Ry. Cas.*, 293, it was held that where the traffic on the highway is much heavier than on the railway by which it is crossed it was justifiable to give weight to the particular facts. In this case, Symington avenue was senior. The Board found that protection by gates and watchmen was necessary. Considering the particular facts, it made an order directing 20 per cent of the cost of protection to be paid out of the Grade Crossing Fund, and provided that the remaining 80 per cent as well as the cost of operation, should be divided equally between the applicant and the respondent.

The respective volumes of traffic on the highway and on the railway in regard to their bearing on the question of danger was given weight in *City of Montreal vs. Grand Trunk Ry. Co.*, 22 *Can. Ry. Cas.*, 444. In the case in question, subject to the contribution which could be made from the Grade Crossing Fund, provision was made that the railway company and the city should share equally the burden of the establishment of gates, and the maintenance and operation of them when completed.

In the *City of Hamilton vs. Hamilton Street Ry. Co. and T.H. & B. Ry. Co., Main Street Crossing Case*, 29 *Can. Ry. Cas.*, 184, it was recognized, at p. 189, that:—

“While there is no desire to create a disturbance of that wholesome rule (that is, the senior and junior rule), I am not prepared to say it is

applicable to this case. It has been varied and relaxed, according to circumstances, by various decisions of this Board. The facts of each case have to be taken into consideration."

In *City of Brantford vs. Can. Nat. Rys.*, 35 *Can. Ry. Cas.*, 155, the railway was junior. The city submitted that on account of the railway being junior at the crossing it should, as part of its railway undertaking, be directed to construct a subway, at its own expense, after deducting a sum from the Grade Crossing Fund. At p. 158, the following was set out in the judgment:—

"As a rule, when a railway is carried across an existing highway, the cost of the construction, maintenance and protection of the crossing is borne by the company, as part of its railway undertaking; and conversely, when a highway is carried across an existing railway, the said cost is borne as part of the highway undertaking. This is a general line of practice commonly known as the senior and junior rule; but it suffers exceptions and it is sometimes assuaged on account of special circumstances. For instance, when, at a crossing located in a city or town, passes vehicular traffic which originates or terminates within the municipality, and such traffic has increased in volume more rapidly than the traffic on the railway, the municipality, notwithstanding its seniority, is called upon to bear a part of the cost of the works ordered."

The Board held that 40 per cent, not exceeding \$100,000, should be paid out of the Grade Crossing Fund; 40 per cent by the railway; and 20 per cent by the city of Brantford. The cost of maintenance of the street service, pavements, and sidewalks, including drainage and lighting, should be at the expense of the city; the balance of the cost of maintenance should be at the expense of the railway company.

On consideration of the particular facts in the present case, I am of opinion that it is open to the Board to direct that, notwithstanding the admitted seniority of the steam railway at the point of crossing, such contribution as the Board deems proper should be directed.

The Hydro-Electric Power Commission referred to an Act of the Provincial Legislature of 1930, chapter 57, and to an agreement attached to the schedule of that Act, on page 277, section 2, subsection (e), which reads: "The municipality agrees, among other things, to furnish a free right of way for the railway and for the power lines of the commission." The further submission is made that in apportioning the cost of the subway in question no part of the cost which went to the street, the approaches, the damages, or anything which comes under the head of work to provide a right of way for the railway should be calculated as being cost towards which the railway should contribute.

I am of the opinion that, under the decisions of the Board, it is justifiable, if the Board deems proper, to disregard the question of an agreement in respect of right of way as between the street railway, or the body owning it, and the municipality, that it is open to the Board, notwithstanding this, to assess against the street railway, or body owning it, such charge as it deems proper; and that questions in regard to matters arising in respect of an agreement are to be dealt with between the municipality and the railway, or the body owning same.

As above set out, contribution has been directed from the Unemployment Relief Fund. Under the unemployment relief legislation, the Dominion of Canada and the province of Ontario entered into arrangements with the town of Walkerville in respect of the construction of the approaches to the subway. This

involved the sum of \$84,230, to which the province and the Dominion contributed one-half. In the building of the subway, one object kept in mind by the town of Walkerville was to afford an opportunity for the use of hand labour. The use of hand labour in preference to the facilities afforded by machinery added \$20,600. The pavements and sidewalks within the area of Wyandotte street subway cost \$8,100.

Putting the matter in a summary way, the following items, already referred to,—

- (1) Contribution from the Unemployment Relief Fund, under Order No. 48397;
- (2) Contribution from the Unemployment Relief Fund in regard to approaches to the subway;
- (3) Additional hand-labour costs;
- (4) Paving and sidewalks in the subway,

should be deducted from the general cost.

Counsel for the city of Windsor objected to the jurisdiction of the Board on two grounds. His first exception was on the ground that the order had been made under section 256 of the Railway Act and that the order was permissive. He submitted that the only way in which the city of Walkerville could be made responsible for any portion of the cost was under the provisions of section 39 of the Railway Act which, he argued, did not apply to a permissive order. Apparently, counsel overlooked the fact that section 39, subsection 1, as it now stands, gives the Board power as to mandatory and as to permissive orders; for, under that section, the Railway Act authorizes the Board to exercise the powers therein set out in respect of whether it directs or permits any structure, etc., to be provided, constructed, reconstructed, altered, installed, operated, used, or maintained. It may further be noted that while there was no doubt in the minds of the Board in regard to the scope of the order, yet, for greater caution, Order No. 46471 issued giving, if this were needed, mandatory effect.

Counsel for the city of Windsor also referred to notice not having been given, in the first instance, to the city of Windsor. This has been set out. No hearing in the matter was held until the one was provided for which dealt with the items of cost and participation therein. Counsel intimates that in the absence of notice in the first instance it is beyond the Board's powers to direct a contribution from the city. As has been pointed out, after notification was given in regard to the meeting dealing with costs, counsel was present. Evidence was submitted by him through witnesses Little, Dawson, Webster, Croll, Curry, and Desmarais, taking up about eighteen pages of the record. Twenty-eight pages of the record have been taken up in cross-examination by him, and a little over ten pages were taken up with argument; making a total of fifty-six pages out of a total record of one hundred and eighty-five pages.

The enumeration of pages is not, of course, intended to be in the slightest degree a criticism; it is simply a recognition of the fact that the city of Windsor was represented by counsel, who took an active and able part in the hearing.

Wyandotte street is an important thoroughfare in the border cities and its protection is of interest, in the present instance, not only to Walkerville but, also, to the cities of Windsor and East Windsor; and I am of opinion that the Board is justified in placing on both of these cities a portion of the cost of the protective work concerned.

In the summary which follows, provision is made for, approximately, 53 per cent being placed on the town of Walkerville:—

(1) Estimated cost..	\$389,000
(2) Amount provided out of the Grade Crossing Fund from amount paid to said Fund for the relief of unemployment..	100,000
	<hr/>
	\$289,000
(3) Paving and sidewalks through the subway, chargeable against Walkerville..	8,100
	<hr/>
	\$280,900
(4) Approaches—of which one-half is paid by the Dominion and the province of Ontario; balance being charged against this work. . .	42,115
	<hr/>
	\$238,785
(5) Extra hand-labour cost..	20,600
	<hr/>
	\$218,185
(6) Under agreement of November 12, 1930, Walkerville obligated itself to bear whatever sum the Board might find proper to charge against East Windsor in connection with this work. The sum found is..	20,000
	<hr/>
	\$198,185

The balance should be divided as follows:—

Walkerville, 60 per cent of \$198,185..	\$118,911
Pere Marquette and Lake Erie and Detroit River Railway Companies, 20 per cent of \$198,185..	39,637
Windsor, 10 per cent of \$198,185..	19,818
Hydro-Electric Power Commission and Hydro-Electric Railways, the balance..	19,819

The figures of estimated cost above given are as close as can at present be obtained—they are not necessarily final. Any excess of cost over and above the figures set out in the summary form should be borne by the town of Walkerville; while, on the other hand, any reduction in figures of cost which may accrue should redound to the benefit of the town of Walkerville, and it should be given credit for same. Maintenance is to be divided,—

60 per cent on the town of Walkerville.

20 per cent on the Pere Marquette and Lake Erie and Detroit River Railway Companies.

10 per cent on the city of Windsor.

10 per cent on the Hydro-Electric Power Commission of Ontario and the Ontario Hydro-Electric Railways.

The cost of lands and damages necessarily arising in connection with the work should be undertaken by the town of Walkerville; the expense so incurred to be adjusted in the final settlement.

June 6, 1932.

Commissioner Norris concurred.

Application of the Canadian Freight Association for approval of proposed Supplement No. 4 to Canadian Freight Classification No. 18.

File No. 33365.85.10

JUDGMENT

BY THE BOARD:

1

Proposed Supplement No. 4 to Canadian Freight Classification No. 18 was submitted for approval by Chairman Ransom of the Canadian Freight Association on January 16, 1932. Notice was duly published in the *Canada Gazette* as required under section 322 of the Railway Act and the Board's General Order No. 271. Proof copy of the proposed supplement, together with copy of notice of publication in the *Canada Gazette*, was mailed by Chairman Ransom to the parties stipulated by General Orders Nos. 271, 348, 353, 469 and 471, with request that their objections, if any, be filed with the Board within thirty days. The supplement contains numerous new items, changes in shipping conditions, a number of reductions and a few advances. Objections were filed to a number of the changes and some of these were disposed of through further negotiation between the objectors and the classification committee, and the modifications agreed upon are hereinafter set out and will be covered in the order which will issue approving the supplement.

The items in respect to which the parties could not agree were set down for hearing at sittings of the Board in Ottawa on May 31, 1932, and are dealt with below.

2

FEED, ANIMAL OR POULTRY—MEAT OR FISH, WITH OR WITHOUT CEREAL
OR VEGETABLE INGREDIENT

There is at present no specific item in the Classification covering the commodity which is here in question and it is proposed to make suitable provision therefor under the distinctive heading of Feed, Animal or Poultry, by a new item reading:—

	Ratings	
	L.C.L.	C.L.
Meat or fish, with or without cereal or vegetable ingredient:		
In hermetically sealed cans in barrels or boxes.....	3	..
In packages named, C.L., min. wt. 30,000 lbs.....	..	5

The Canadian Manufacturers' Association, on behalf of the Swift Canadian Company, Limited, objected to the proposed ratings, contending that this type of animal feed is substantially similar to other types of animal feed covered by item 1, page 117 of the Classification, which provides for Prepared Animal or Poultry Feed, N.O.I.B.N., other than Condimental or Medicinal, at ratings of 4th class L.C.L. and 8th class C.L.; further submitting that it is unreasonable to charge on this commodity, averaging in value 6 cents per pound, the same ratings as provided for canned meats used for human consumption, which, they allege, average in value 26 cents per pound. With respect to the similarity

alleged by these objectors between this commodity and other types of animal feed covered by item 1, page 117, they gave no specific comparisons.

The question was raised as to the item in the classification under which the commodity would at present move, but it is unnecessary to deal with this phase of the matter; it is merely necessary on this record to determine whether or not the proposed ratings should be approved.

The Canadian Manufacturers' Association referred to 174 I.C.C., 450, where the Interstate Commerce Commission considered and decided in May, 1931, the matter of classification ratings on this same commodity. The commission there found that the ratings applicable on canned goods (the higher priced food rather than the cheaper varieties) would be reasonable for this commodity. The ratings proposed by the Canadian Freight Association are the same as provided in the Canadian Freight Classification for canned goods when similarly packed for shipment. It is also noted that the ratings provided for this canned animal feed in metal cans, in barrels or boxes in the Official Classification, are the same, both L.C.L. and C.L., as therein provided on canned meats; in the Western Classification the ratings are the same on carloads and one class higher L.C.L. on the canned animal feed; in the Southern Classification the L.C.L. ratings are the same, but the carload rating is lower on the canned animal feed.

The Canadian Freight Association filed a statement showing the classification ratings and values of various animal and poultry feeds as follows:—

Commodity	Ratings	LCL.	CL.	Value in cents per pound
Bakery refuse.....		3	5	1 to 3 c.
Bone meal.....		4	7	3½ ton lots
Cotton seed meal.....		4	8	3 c. ton lots.
Butter milk condensed.....	{ In pails crated.....	3}	7	3 to 5 c.
	{ In bulk in bags or brls.....	4}		
Dog or fox biscuit.....		3	5	8½ to 11½.
Fish meal.....	{ In cartons in boxes.....	3}	7	4-8 ton lots.
	{ In bulk in bags or boxes.....	4}		
Oil cake meal.....		4	8	3 ton lots
Meat scrap.....	{ In cartons in boxes.....	3}		
	{ In bulk in brls. or boxes.....	4}	7	3¾ ton lots.
Tankage.....	{ In cartons in boxes.....	3}		
	{ In bulk in bags or brls.....	4}	7	3¼ ton lots.
Oyster shells.....	{ In cartons in boxes.....	3}		
	{ In bulk in bags or brls.....	4}	8	1 ton lots.
Poultry grit.....	{ In cartons in boxes.....	3}		
	{ In bulk in bags or brls.....	4}	8	1 ton lots.
Silver fur food.....				7 c.

The last entry above shown is the description given by the Swift Canadian Company on the label of the cans containing the feed here in issue. The value is shown above as 7 cents per pound, as compared with 6 cents per pound shown by the Canadian Manufacturers' Association. The composition of this feed is given as consisting of meat by-products, vegetables, cereals, mineral salts and dry skim milk.

Upon consideration of all that was submitted, we are of the opinion that the proposed ratings are reasonable and should be approved.

FERTILIZERS, CHEMICALLY PREPARED, N.O.I.B.N.

Item 34, page 117, of the classification reads:—

	L.C.L.	C.L.
"Fertilizers, chemically prepared, N.O.I.B.N.:		
In bags or barrels.....	4	..
In bags or barrels or in bulk, C.L., min. wt. 30,000 lbs.....	..	7"

It is proposed to amend this item to read:—

"Fertilizers, chemically prepared, N.O.I.B.N.:		
In bulk in bags weighing each 25 lbs. or less.....	3	..
In inner containers in barrels or boxes.....	3	..
In bulk in bags weighing each 25 lbs. or less or in inner containers in barrels or boxes, C.L. min. wt. 30,000 lbs...	..	5
In bulk in bags weighing each over 25 lbs. or in barrels.....	4	..
In bulk in bags weighing each over 25 lbs. or in barrels or in bulk, C.L. min. wt. 30,000 lbs.....	..	7"

The carriers state the present classification provision, established many years ago, was to provide for the movement of these fertilizers when shipped in bulk in bags or barrels for agricultural purposes; subsequently, manufacturers of fertilizers have placed them on the market in small packages ranging in weight from 1 to 25 pounds, to be used for lawns, gardens and flower beds; that these small packages are very much more valuable per pound than the fertilizers used generally for farm purposes and higher ratings thereon, as proposed by the classification amendment above set out, are, therefore, justified.

Objection to the proposed ratings is made by some of the manufacturers. They state the commodity is exactly the same as that put up in bulk in the larger bags, or in barrels; that the smaller packages have been introduced for the purpose of increasing the sale of fertilizers to those users who formerly may not have been reached through the sale in larger packages, or in bulk. That the higher value is brought about by the cost of the greater number of packages per 100 pounds and the cost of labour in placing the article in the smaller packages; that from a transportation standpoint, these small packages, when placed in bags or boxes, furnish even more substantial packing than the shipments in bulk in bags. They further state:—

"There is no doubt but what value is an important factor in the determination of classification and the theory behind this factor is that the higher value produces a greater ability to pay a higher charge. In this case, however, the higher value does not produce this condition and therefore the ability to pay has not been increased."

As to this latter statement there is nothing before the Board on this record to indicate that the movement or sale of fertilizers in these small packages will be detrimentally affected by the ratings proposed. Details were given by the Swift Canadian Company concerning "Vigoro" fertilizer, showing the kinds of packages in which shipped, the weight per cubic foot, value per pound and dimensions and weights of packages. The values given are manufacturers' prices and, of course, differ from the retail prices as furnished by the Canadian Freight Association, as shown by the following comparison:—

Quantity in Pounds	Price per pound	
	Manu- facturers price	Retail price
	cts.	cts.
5 lb. cartons.....	6.4	12
25 lb. bags.....	4.7	8
50 lb. bags.....	3.9	7½
100 lb. bags.....	3.4	6

Retail prices of several other prepared fertilizers covered by this classification item were also given as follows:—

Name	Quantity in pounds	Price per package		Price per pound
		\$	cts.	
Sacco.....	1 can	0	20	20
	5 bag	0	50	10
	10 bag	0	85	8½
	25 bag	1	75	7
	100 bag	5	50	5½
C.I.L. plant food.....	1 can	0	15	15
	5 bag	0	50	10
	25 bag	1	75	7
	100 bag	5	00	5
Clays fert.....	7	1	25	18
	14	2	25	16
	28	3	75	13½
	112	13	50	12
Bloom aid.....	1 lb. can	0	25	25
	5 lb. can	0	50	10
	25 lb. bag	1	75	7
	100 lb. bag	5	50	5½
V.C. Fairway.....	10 bag	1	00	10
	25 bag	1	75	7
	100 bag	5	50	5½

There are other fertilizers not covered by the item here in question but specifically provided for in the classification with ratings of second and third class L.C.L. and 5th class C.L., namely, muriate of potash, nitrate of soda, sulphate of potash, sheep manure and sulphate of ammonia. With respect to the four first named, the L.C.L. rating is one class higher when packed in cans or cartons in barrels or boxes than when shipped in bulk in bags, barrels or boxes. Retail prices of the William Rennie Seed Company for 1932 are shown below:—

Name	Quantity in pounds	Price per package		Price per pound
		\$	cts.	
Muriate of potash.....	5	0	35	7
	10	0	75	7½
	25	1	35	5½
	100	4	25	4¼
Nitrate of soda.....	5	0	40	8
	10	0	65	6½
	25	1	50	6
	100	5	00	5
Sulphate of ammonia.....	2	0	25	12½
	5	0	45	9
	10	0	85	8½
	25	1	50	6
Sulphate of potash.....	5	0	50	10
	10	0	75	7½
	25	1	50	6
	100	5	00	5
Sheep manure.....	2	0	15	7½
	5	0	35	7
	10	0	65	6½
	25	1	00	4
	100	3	25	3¼

There is no uniformity in the classification in that, in many instances, the same L.C.L. rating is provided for an article when packed in cans or cartons in boxes or barrels as when shipped in bulk in barrels or boxes, while, in numerous other cases, rating of one class higher applies when packed in the form first mentioned. This may be quite reasonable and not illogical in the light of the conditions surrounding the shipment of the individual articles in question, but there are no data before the Board enabling an analysis on this point. There is a general principle of classification—although there are some exceptions—that the L.C.L. rating is one class higher on articles in glass packed in boxes or barrels than when in fibre or metal cans packed in boxes or barrels. Value is one of the determining factors in classification. In *re* proposed Canadian Freight Classification No. 17, Volume 15, Board's Judgments and Orders, at page 220, there was before the Board the L.C.L. rating on common salt. When in five and ten-pound pockets, or small bags, packed in bags, barrels or boxes, it is rated third class as compared with fourth class when in bulk in bags or barrels. The Board refused the application to make the lower rating applicable on the shipping condition first mentioned, and the difference in value was there considered. In the same case, at page 211, there was considered the ratings on shoe and stove polish where the Board was asked to provide the same ratings when in cans in barrels or boxes as when shipped in bulk in barrels. The application was refused. Reference was there made to a decision of the Interstate Commerce Commission which is apposite (*O-S-O-Ezy Products Company vs. Director General*, 85 I.C.C., 187). At page 191, the commission stated:—

"On brief complainants contend that because furniture polish in bulk in barrels is rated third class the same rating should be applied on shipments in glass and in metal cans in barrels or boxes, on the ground that the latter are packed more securely. In this connection they cite the Western Classification case, 25 I.C.C., 442, in which we commented upon the fact that packing an article in fibre or metal cans or cartons in barrels or boxes ordinarily produces a more secure and hence a more desirable package for transportation than when the article is shipped in bulk in barrels. That case is not authority for the broad proposition that a more secure package may never be rated higher than one less secure. We there pointed out that the relationship in ratings between the two classes of packages was dependent also upon other considerations. In discussing the classification under suspension in that proceeding, we said, pages 498-499:—

'One of the tendencies . . . appears to be to apply a higher rating on commodities in packages in barrels or boxes than on commodities in bulk in barrels or boxes, notwithstanding the fact that shipments in packages in barrels or boxes afford a superior package for transportation. . . . In many instances the difference in value between the article shipped in bulk in barrels or boxes and the same article when shipped in packages in barrels or boxes is very small. . . . The value of an article . . . is one of the determining factors in classification. . . .

'It is expected that the carriers will revise all such items in the classification, whether specifically mentioned in this report or otherwise, to conform to the principles above announced with regard to ratings on the safer and more secure packages. That is to say, where there is no marked or wide variation in the value of the same commodities when shipped in fiber or metal cans or containers when packed in barrels or boxes, the rating on such double packages should not be higher than the rating on the same commodity when shipped in bulk in barrels.'

"There is no direct evidence of the value of furniture polish in bulk in barrels, as complainants do not ship it in that form, and apparently it is not so shipped by other manufacturers, at least to any appreciable extent. The present grading of the rates on this commodity in the various containers used at least leads to the inference that the difference in average value per barrel, as between the small containers packed in barrels and the bulk barrel shipments, would be considerable."

We are of the opinion that the proposed change in this item is not unreasonable and should be approved.

4

FLOORING SQUARES, WOODEN, WITH OR WITHOUT PAPER BACKING OR METAL
SPLINES, NOT WOOD CARPETING OR PARQUET FLOORING

It is proposed to add a new item in the Classification, reading:—

	L.C.L.	C.L.
"Flooring squares, wooden, with or without paper backing or metal splines, not wood carpeting or parquet flooring:—		
In boxes, bundles or crates.....	3	..
In packages named, C.L., min. wt. 30,000 pounds.....	..	6

The description of the item is the same as shown in the Consolidated Freight Classification in the United States. It is stated the article to be covered by this item is composed generally of three small pieces of wood, planed, tongued and grooved, fastened together with metal splines or otherwise. As indicated by the description, it is used for flooring. It is stated that it competes with strip flooring, also loose short pieces which may be laid so as to form flooring squares or blocks. The strip flooring and the loose short pieces require the use of stringers on which to be nailed, while the article here in question is, by means of a binder, laid directly on the cement or concrete, thus eliminating the cost of stringers and nailing. It is stated that in the manufacture of strip flooring there is considerable waste in the form of short pieces and this article enables the utilization of what would otherwise, in many instances, be waste material. To the extent that there is a market, the same would be true of the short loose pieces. Up to the present time, there is only one plant in Canada making the article described by the proposed item, which commenced operation in September, 1931. Strip flooring and the short loose pieces are rated as lumber by items 23 and 24, page 187 of the Classification. Objection was taken to the establishment of higher ratings on flooring squares than on lumber on the ground of similarity and that they must compete with the flooring rated as lumber.

From the standpoint of the alleged competition, however, the record is devoid of any data which would enable this feature to be intelligently considered by the Board. The difference in the method of laying the two types of flooring has been referred to, but without any detailed information concerning the relative advantages, or disadvantages, attaching thereto, or the factors which influence the purchase of flooring squares as compared with flooring.

As to the similarity, the carriers contend a difference in rating is justified because these flooring squares have gone beyond the stage of manufacture as lumber and are, consequently, a manufactured article to as great a degree as other wood products which are provided with higher ratings than applied on lumber, citing as examples, mouldings, curtain poles, or rods, shade rollers, or

sticks, yardstick blanks, brush blocks, etc. In all these instances the manufacturing process appears to be very slight and it undoubtedly, is difficult to always determine where the line should be drawn.

From the standpoint of value, which is one element considered in the classification, there appears to be a material difference between the short loose pieces and the made-up flooring squares, or blocks. The manufacturer of the articles under consideration furnished the following data. The prices given are per square foot, f.o.b. Toronto.

Grade	Short Loose Pieces cts.	Flooring Squares cts.
1st Qtd. Wh.....	21	28
2nd Qtd. Wh.....	14	22
1st Pl. Wh.....	13½	22
1st Pl. Red.....	12½	21
2nd Pl. Wh.....	11	18½
3rd Pl. Wh.....	7½	15
4th Mixed	5½	12

For all the grades the average price is 12·1 cents per square foot for the loose short pieces as compared with 19·7 cents for the flooring squares; in other words, based on this average, the price per square foot of flooring squares is 162·8 per cent of the price per square foot for loose short pieces.

Upon reference to the Consolidated Freight Classification, and an examination of the ratings therein provided for flooring squares and on lumber, a lack of uniformity is revealed. In the Official Classification, the ratings on flooring squares, both L.C.L. and C.L., are higher than on lumber. In the Southern Classification, both take the same rating C.L., but the flooring squares are provided with a higher rating L.C.L. In the Western Classification, both take the same ratings L.C.L. and C.L.

While provision made by commodity tariffs has no bearing on the principles governing the prescription of ratings in the Classification, it may be stated that the carload rating in the Canadian Classification is of little or no consequence to the shippers, for the reason that in their commodity tariffs, the carriers have established the lumber rates on the flooring squares in carloads.

Upon what is before the Board on this record, we are of the opinion that the proposed ratings on flooring squares are not shown to be unreasonable and they will be approved. Further, the evidence does not prove that the difference in L.C.L. rating will prevent flooring squares from competing with the other types of flooring.

5

CANDY OR CONFECTIONERY, ETC., IN PAILS WEIGHING LESS THAN 20 POUNDS EACH

The proposed change concerns only the L.C.L. rating on these commodities when shipped in pails. The provision at present reads merely "in pails"; it is proposed to make it read "in pails weighing not less than 20 pounds each." By this change, and under the provisions of section 8 of rule 16 of the classification, if the commodities are tendered for carriage, and accepted, in pails weighing less than 20 pounds each, the weight last named would be charged for on each pail.

The carriers point out that additional handling is necessary where small loose pails are transported and they are undesirable; that, in many cases, articles in pails are rated one class higher than when shipped in bulk, or in cans or cartons in boxes or barrels; that where, as here, the same rating is given on pails loose as when in boxes or barrels, it is the general practice to restrict the weight

to not less than 20 pounds each. Mr. Ransom pointed out that in Classification No. 16, a 25-pounds weight restriction was provided for the pails; otherwise the rating was one class higher and stated that when the item was subsequently amended, the weight restriction was omitted inadvertently.

Certain firms have been shipping pails weighing less than 20 pounds each and have a stock of such pails on hand on which they would be obliged to pay an increased weight. It was suggested on behalf of the confectionery trade that a weight limit of 15 pounds be established, which, Mr. Ransom pointed out, would be inconsistent with the general provision already above referred to, but he stated the carriers would be agreeable to having the effective date of the proposed change placed at January 1, 1933, in order to give the manufacturers ample opportunity to work off their present stock of the smaller pails.

We are of the opinion that this is reasonable and will approve the item accordingly.

6

The modifications or additions to the proposed supplement, as referred to in section 1 hereof, are as follows:—

Page Number	Item Number		L.C.L.	C.L.
2	24	Change to Read:— Water tube boiler parts, consisting of iron or steel headers; tubes; drums, steam, water or mud; cross boxes; nipples; boiler fronts; grate bars; stokers; hangers; fittings and fixtures for same, iron or steel, loose or in packages, straight or mixed C.L., min. wt. 24,000 lbs., subject to Rule 7 ..		5
3	24	This item to be changed to read:— Cellulose, handkerchiefs, napkins, neck strips, towels or wadding, N.O.I.B.N., in boxes, bundles or wrapped rolls.....	1	..
5	41	Add the following item as No. 41:— Flood lights, in boxes or crates.....	1	..
6	8	Church Furniture: The last line in item 8 to read:— K.D. flat, in boxes or crates.....	2	..
6	10	Altar railings, add the following shipping condition: K.D. flat, in boxes or crates.....	2	..
6	12	Eliminate Pulpits.		
6	14	The following note to be added thereto as item 15: <i>Note:</i> Includes all chairs having wooden or leather seats, but will not include chairs that are further upholstered.		
6	16	Confessional Boxes: The last line to be changed to read: K.D. flat, in boxes or crates.....	2	..
6	20	Pews, the last line to be changed to read: K.D. flat, in boxes or crates.....	2	..
6	21	Pulpits, in crates, O.R.B. & C. or in boxes.....	1½	..
6	22	Eliminate Screens.		
6	26	Eliminate Screens.		
9	8	Household Goods. Add the following to Note 7: "Providing the owner of the automobile is the owner of the Household Goods or Settlers' Effects."		
13	26	Change the heading to read: Tire Patching Material, including Tire Shoes.		
15	2	Welding Rods, change to read: Iron or Steel Cast. Add as Item 3: Iron or Steel, other than cast, in barrels, boxes or bundles.....	4	..

SHIPMENTS OF LIVE STOCK FROM NON-AGENCY STATIONS

The question of responsibility in connection with shipments of live stock from non-agency stations has been the subject of some correspondence between the Board and the carriers, and to give effect to the provision agreed upon to be included in the classification under the General Rules governing the Transportation of Live Stock, rule 8, paragraph (a), item 2, page 186, of the classification is to be amended in this supplement to read as follows:—

“Bill of Lading, or Special Live Stock Contract, as the case may be, must be signed by the shipper for each consignment before shipment is accepted for carriage.

“In the case of live stock shipped from a private siding or a station, wharf or landing, where there is no duly authorized agent, the delivery to the carrier shall be deemed to be effected when the car is lifted, or if a bill of lading or special live stock contract, as the case may be, has been issued prior to the lifting of the car, then at the time of such issue.”

Inasmuch as proposed Supplement No. 3 to the classification has not yet been finally dealt with, proposed Supplement No. 4 will, of course, issue as Supplement No. 3 to the classification.

A. D. CARTWRIGHT,
Secretary.

Ottawa, Ont., June 6, 1932.

GENERAL ORDER No. 500

WEDNESDAY, the 8th day of June, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of proposed Supplement No. 4 to Canadian Freight Classification No. 18, on file with the Board under file No. 33365.85.10.

Whereas notice has been given by the Canadian Freight Association in the *Canada Gazette*, as required by section 322 of the Railway Act, and copies of the said supplement furnished to the organizations named in the General Orders of the Board Nos. 271, 348, 353, 469, and 471, with the request that their objections, if any, be filed with the Board within thirty days;

Upon consideration of the said objections; and upon hearing the application at the sittings of the Board held in Ottawa on May 31, 1932, the Canadian Freight Association, the Canadian Manufacturers' Association, the Montreal Board of Trade, the R. Laidlaw Lumber Company, Bruce Lumber Company, J. R. Eaton & Sons, Limited, and the Canada Flooring Company, Montreal, being represented at the hearing, and what was alleged,—

The Board orders: That the said proposed Supplement No. 4 to Canadian Freight Classification No. 18, be, and it is hereby, approved, to be issued as Supplement No. 3 to the classification, subject to the following changes and additions, namely:—

Page Number	Item Number		L.C.L.	C.L.
2	24	Change to Read:— Water tube boiler parts, consisting of iron or steel headers; tubes; drums, steam, water or mud; cross boxes; nipples; boiler fronts; grate bars; stokers; hangers; fittings and fixtures for same, iron or steel, loose or in packages, straight or mixed C.L., min. wt. 24,000 lbs., subject to Rule 7 ..		5
3	24	This item to be changed to read:— Cellulose, handkerchiefs, napkins, neck strips, towels or wadding, N.O.I.B.N., in boxes, bundles or wrapped rolls.....	1	..
5	41	Add the following item as No. 41:— Flood lights, in boxes or crates.....	1	..
6	8	Church Furniture: The last line in item 8 to read:— K.D. flat, in boxes or crates.....	2	..
6	10	Altar railings, add the following shipping condition: K.D. flat, in boxes or crates.....	2	..
6	12	Eliminate Pulpits.		
6	14	The following note to be added thereto as item 15: <i>Note:</i> Includes all chairs having wooden or leather seats, but will not include chairs that are further upholstered.		
6	16	Confessional Boxes: The last line to be changed to read: K.D. flat, in boxes or crates.....	2	..
6	20	Pews, the last line to be changed to read: K.D. flat, in boxes or crates.....	2	..
6	21	Pulpits, in crates, O.R.B. & C. or in boxes.....	1½	..
6	22	Eliminate Screens.		
6	26	Eliminate Screens.		
7	1	Candy or Confectionery, N.O.I.B.N., etc., the effective date of this item to be made January 1, 1933.		
9	8	Household Goods. Add the following to Note 7: “Providing the owner of the automobile is the owner of the Household Goods or Settlers’ Effects.”		
13	26	Change the heading to read: Tire Patching Material, including Tire Shoes.		
15	2	Welding Rods, change to read: Iron or Steel Cast. Add as Item 3: Iron or Steel, other than cast, in barrels, boxes or bundles.....	4	..
		Rule 8, paragraph (a), Item 2, page 186 of the Classification, to be amended to read: “Bill of lading, or Special Livestock Contract, as the case may be, must be signed by the shipper for each consignment before shipment is accepted for carriage. “In the case of livestock shipped from a private siding or a station, wharf or landing, where there is no duly authorized agent, the delivery to the carrier shall be deemed to be effected when the car is lifted, or if a bill of lading or special livestock contract, as the case may be, has been issued prior to the lifting of the car, then at the time of such issue.”		

C. P. FULLERTON,
Chief Commissioner.

Application of the Lakeside Milling Co., Ltd., Toronto, on behalf of itself and all other Ontario Grain Millers:—

In the matter of Tariffs on Grain and Grain Products C.P.R. E. 398, C.R.C. No. E. 4566; C.N.R. CG 127, C.R.C. No. E. 1840, effective April 9, 1932;

In the matter of Tariffs on Grain and Grain Products from Bay ports to destinations Montreal and South and East thereof, including the Maritime Provinces;

In the matter of Section 314 and following and related Sections of the Railway Act;

In the matter of rates on flour and grain products from Lake Head to Montreal for export via Lake and Rail No. E. 511, C.R.C. No. E. 4575 and C.N.R. tariff CG. 133, C.R.C. No. E. 1850, effective April 18, 1932; and

In the matter of Tariffs of rates on such flour and grain products from Port Colborne to Montreal for export, and from Goderich to Montreal for export, C.P.R. Tariff 489A, C.R.C. No. E. 4577, and C.N.R. Tariff CG. 129, C.R.C. No. E. 1845 covering rate from Port Colborne and CG. 135, C.R.C. No. E. 1852 covering rate from Goderich.

File 38316

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

In his opening, counsel for the applicants stated that the railway companies had filed tariffs on grain and grain products which set out on their face that they were competitive and were issued in order to meet "what is alleged to be water competition." The position of the applicants—the Lakeside Milling Company and other eastern inland millers—was stated to be that they take their wheat from Bay ports elevators and they complain that they are directly and unjustly discriminated against by these tariffs. They set out that undue preference is by these tariffs accorded to western millers who are thus permitted to invade the natural market of the Ontario miller in Montreal, points in Quebec east and south of Montreal, and the markets of the Maritime Provinces. It was further stated by counsel for the applicants that the rates in question are on a preferential basis not only as regards the tariffs particularly referred to but as regards other matters which, he stated, he would discuss; and he set out in a summary way that the rates in question had disrupted the business done by the Ontario inland millers. In response to a question of the Chief Commissioner, he said he did not contend that the rates were not water-compelled; but he said that in applying the principles of water competition to the rate situation there had to be considered in the matter of unjust discrimination not only the water competition itself but certain limiting conditions.

Lake and rail rates on sacked grain and grain products for domestic consumption are published from the head of the lakes to stations in Eastern Canada, namely, 29 cents to Montreal and West, with differences, or arbitraries, over to Quebec and Maritime Province points. There was a revision of these rates

this season, the rate to Montreal being reduced from 32½ cents to 29 cents and the arbitraries being also reduced, as shown by examples given in Exhibit No. 12; and while this was explained on the record, nothing turns on it because there is no complaint before the Board concerning these rates.

From the bay ports, ex-lake rates on grain and grain products, with milling in transit privilege, are published and the only changes made therein this season were in the arbitraries, or rate differences, over Montreal to Quebec and Maritime Province points, which were in ease of the parties using these rates.

From the head of the lakes the railways published, effective April 9, 1932, special competitive rates on sacked grain and grain products, carloads, via lake and rail routes to certain specific destinations in Eastern Canada, as follows:—

Windsor, Hamilton, and Toronto, 17 cents per 100 pounds.

Montreal, Three Rivers, and Quebec, 21 cents per 100 pounds.

Saint John, Halifax, Sydney, and Yarmouth, 36 cents per 100 pounds.

The rates concerned, it will be noted, are blanketed, Montreal, Three Rivers, and Quebec, being on a 21-cent rate by lake and rail per 100 pounds, and Saint John, Halifax, Sydney, and Yarmouth being on a 36-cent rate. As the rates are blanketed, the spread will, of necessity, vary with the position of the individual termination point. The export rate from Fort William and Port Arthur to Montreal, is shown by exhibit No. 1 filed by the applicant, to give a difference of 4 cents per 100 pounds in favour of the western millers. In the 36-cent group, the differences pointed out as being in favour of the western millers are, for example, Saint John 7 cents, Halifax 9 cents.

The tariffs bear notation that these rates are published to meet water competition and will not apply from or to intermediate points, and will expire November 30, 1932, unless sooner cancelled, changed or extended. It is the above rates that are complained of and which, it is contended, create unjust discrimination against the Ontario millers and which the Board is asked to remove by appropriate remedy. Witnesses for the Milling Company were not particularly concerned with the rates to Windsor, Hamilton, and Toronto; it was the rates to Montreal and points east they were complaining of. Special reduced competitive rates were also published from Goderich and Port Colborne to Montreal, Three Rivers, Quebec, Saint John, Halifax, Yarmouth and Sydney, as shown on exhibit 12; but it appeared that the applicants had no particular complaint against these rates.

It is alleged that these specific commodity rates detrimentally affect the Ontario millers not only at the water ports to which the rates are published but, also, to certain territory contiguous to said ports where the competitive rates plus local rates would be lower than the combination of rates based on an assumed rate of 8½ cents on wheat from the head of the lakes to the bay ports plus the rates published by the carriers from the bay ports to destinations.

The railways contend that the rates in question are special water competitive rates. Exhibit No 15, filed by the railways, gives a statement of eastbound "Lake and Rail" and "All Water" flour tonnage from Fort William and Port Arthur via all routes. This is a joint exhibit of the Canadian National and Canadian Pacific Railways. As far as the lake and rail movements are concerned it was made up from the reports obtained from the Division Freight Agent of the Canadian National at Port Arthur every seven days, showing the movement via Sarnia and the Northern Navigation Company. The Canadian

Pacific figures in regard to Fort William were similarly compiled. The all-water tonnage was checked up from the tonnage which passed over the Canadian National or Canadian Pacific dock or the Ogilvie dock at Fort William and Port Arthur.

For the period 1928-1931, the following detail is available:—

SEASON 1928		
	Tons	Per cent
Lake and rail..	470,246	96·6
All water..	16,297	3·4
Total..	486,543	100·0
SEASON 1929		
Lake and rail..	391,002	85·6
All water..	65,943	14·4
Total..	456,945	100·0
SEASON 1930		
Lake and rail..	306,874	77·3
All water..	89,971	22·7
Total..	396,845	100·0
SEASON 1931		
Lake and rail..	357,853	73·9
All water..	126,336	26·1
Total..	484,189	100·0

A further analysis of the figures shows that for April and May, 1931, there was handled from the head of the lakes 60,295 tons, lake and rail, and 8,417 tons all water; or 87·8 per cent lake and rail and 12·2 per cent all water. In 1932, for the month of April and to May 28, inclusive, there was handled lake and rail 52,859 tons and all water 8,939 tons; or 84·3 per cent lake and rail and 15·7 per cent all water. It will be noted that in the period 1928-1931 there was a steady upward movement in the all water tonnage. This has continued.

The subject of water competition and its bearing on rates has been before the Board many times. The general situation was gone into in the *Blind River Board of Trade Case*, 15 *Can. Ry. Cas.*, 146. Reference may also be made to *re Western Rates*, 17 *Can. Ry. Cas.*, 123, at p. 153; *application of the Brock Co., Calgary, Alta., for inclusion of blankets, etc., in mixed cars with cotton piece goods at the carload rate applying on cotton piece goods from Eastern Canadian points to Calgary*, 21 *Judgments and Orders*, 277, at p. 282.

On the complaint of the *Eastern Canadian Preserved Foods Assn.*, 18 *Judgments and Orders*, 22, what was involved was that the railway companies had put in a reduced rate of 41 cents per 100 pounds, lake and rail, with a view, if possible, of meeting the competition of the all-water route to the head of the lakes. After a trial of the rate, the railways decided that such reduction did not afford a rate sufficiently low to attract business, and, therefore, decided to cancel the same. In the judgment, which was rendered on May 28, 1928, by former Chief Commissioner McKeown, it was pointed out that it was an accepted principle in ratemaking that it was optional with the railway companies to

meet competition by lowering rates under such conditions. It was set out that in the face of competition between rail and water lines, a commodity rate, such as was at issue, was recognized by the Board as a fair move by the railway companies to enable them to compete with water carriage; that it was quite another thing to force the railway companies to put in or to maintain such competitive rate in case they desire its abandonment as in the present instance.

It was further set out in the judgment:—

“The matter, therefore, presents itself as an application to compel continuance of a competitive rate, and on this point the Board is on record in many decisions. It has frequently expressed the view that, subject to the provisions of the Act regarding discrimination, it is within the discretion of the railway companies to meet water competition, but that the railway companies are not to be compelled to put in or maintain rates to meet such water competition.”

The existence of effective water competition on the lakes is not in question. Existing conditions in regard to trade in general have had their effect upon the lakes, and in an endeavour to obtain traffic lake rates have been put on an extremely low basis.

Counsel for the applicants, while recognizing water competition as a factor affecting rates, claimed, in substance, that this was no answer to a complaint of unjust discrimination and claimed, further, that if thereunder detriment to his clients accrued he desired to invoke the powers of the Board in connection with unjust discrimination and undue preference.

The Board has had before it in the *Midland Lumber Shippers vs. G.T.R. Co.*, 22 C.R.C., 387, a case dealing with water competition and at the same time involving unjust discrimination. Here, Penetang, Ont., and Midland, Ont., were shipping lumber to Cleveland, Ohio. In the case of Penetang, the rate was shown as 16·3 cents while from Midland the rate was 19·4 cents. The distance between the two originating points was three-tenths of a mile. It was alleged that there were conditions in water competition which justified a difference in treatment. It was pointed out, however, that no evidence had been submitted to show whether there was in fact a difference in point of water competition as between the two shipping points concerned and how these differed. The Board, on the special facts, found, p. 390, that “with due regard to the operating arrangements which have been utilized in connection with the movement of this business and the respective earnings, as indicated, the rate adjustment from Midland to Cleveland was unjustly discriminatory, to the extent that it exceeded the rate of 16·3 cents as charged from Penetang and should be adjusted to the same basis.”

On account of the competition between water and rail on movements between points served by both these methods of communication, there is during the season of navigation a choice of routes and, of necessity, a choice of rates. Water carriage is cheaper than rail carriage and, therefore, has an effect on the latter. To have a water-compelled rate, it does not necessarily follow that the rail rate and the water rate are identical, but the rail rate can exceed the water rate only in so far as it has special advantages. In the present case, the Sales Manager of the Lake of the Woods Milling Company testified that his company approached the railway companies last Fall to ascertain what was to be the policy in regard to lake and rail rates. He stated that the railways were informed that if they did not reduce the lake and rail rate the Milling

Company would again be forced to ship by all water. After a number of conferences, the railways agreed to put in the water competitive rates that are in effect now. Asked whether these were below, above, or equal to the rates that can be obtained by water, the shipper said "above." He said there was an advantage in rail shipments, for example, in service, and the fact that dependance could be placed upon a shipment any time; further, that the boat lines did not travel quite as frequently. The witness further said that in so far as rail shipments were concerned, in some instances they were paying 5 cents per 100 pounds more than would be charged by water, and that through the Maritimes there was a 6-cent difference. In answer to a query of counsel, witness said this was a premium he was paying for rail service.

It is admitted, in the present case, that there is a difference in rate as between the movements to the ports concerned and the movements to the inland mills. Counsel for the applicants takes this admitted difference as a measure of the detriment which exists and asks for his remedy on the basis of such detriment. Reference was made in this connection to *Wegenast vs. G.T.R. Co.*, 8 Can. Ry. Cas., 42, at p. 45. This was relied upon as making detriment a criterion of unjust discrimination.

Admission that a difference in rate complained of exists is not, of necessity, the final answer to be made. Water competition is keen. The railway has the option, of course, of not meeting water competition; in other words, it can go out of the business at the points where water competition is effective. This will not redound in any way to the advantage of the points between which water competition is not effective.

The rate difference existing is treated by the applicants as being a measure of the railways' attempt to free themselves from the inhibitions of the Railway Act. The rate difference or detriment is not chosen by the railway as a matter of rate policy and independent of traffic conditions. It is a situation which is created by the activity of water carriers who are not subject to control. At the points where they are operating they are able to put in such rate adjustments as they deem proper. The railways meet these of necessity, and not of choice.

While the difference in rate brings about a situation which must, of necessity, be very hard on the applicants, it is concerned with a situation which arises outside of the Railway Act. The Board is not empowered to direct that a water-compelled rate shall be made the measure of the rate of the applicants as well. The railways have shown that keen competition via the all-water routes actually exists. The amount of empty tonnage is a factor to be given further weight in connection with any consideration of the level of water rates.

I am of opinion that the railways have successfully borne the onus that the circumstances involved are dissimilar and that unjust discrimination or undue preference within the provisions of the Railway Act has not been established.

June 9, 1932.

The Chief Commissioner and Mr. Commissioner Stoneman concurred.

ORDER No. 48728

In the matter of the complaint of the Lakeside Milling Company, Limited, of Toronto, Ontario, on behalf of itself and all other Ontario grain millers, that the following tariffs, namely: (a) the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4566, and the Canadian National Railways' Tariff C.R.C. No. E-1840, effective April 9, 1932, covering lake and rail rates on grain and grain products from Port Arthur, Fort William, and West Fort William to stations in Ontario, Quebec, and the Maritime Provinces; (b) the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4575 and the Canadian National Railways' Tariff C.R.C. No. E-1850, effective April 18, 1932, covering rates on flour and grain products from the head of the lakes to Montreal, for export, via lake and rail; and (c) the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4577 and the Canadian National Railways' Tariffs C.R.C. Nos. E-1845 and E-1852, covering rates on flour and grain products from Port Colborne to Montreal, for export, and from Goderich to Montreal, for export—create and impose an unjust discrimination against the business of the applicant company.

File No. 38316

FRIDAY, the 10th day of June, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, June 1, 1932, in the presence of counsel for and representatives of the applicant company, the Toronto and Montreal Boards of Trade, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 48669

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, for approval of Standard Local Passenger Tariff C.R.C. No. 583, covering charges over the bridge section of the St. Lawrence River Bridge at Cornwall, Ontario, on file with the Board under Case No. 4079.

MONDAY, the 23rd day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's said Standard Local Passenger Tariff C.R.C. No. 583, covering charges over the bridge section of the St. Law-

rence River bridge at Cornwall, Ontario, on file with the Board under Case No. 4079, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48662

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

WEDNESDAY, the 25th day of May, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 40, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 40, approved herein, are as follows:—

Distances	Rates in cents per 100 pounds
Not over 5 miles.. . . .	4½
Over 5 and not over 10 miles.. . . .	5
Over 10 and not over 20 miles.. . . .	5½
Over 20 and not over 30 miles.. . . .	6½
Over 30 and not over 40 miles.. . . .	7½
Over 40 and not over 45 miles.. . . .	8

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48706

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 6th day of June, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight

Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3, namely:—

Supplement 33 to Tariff C.R.C. No. E-1234.
 Supplement 36 to Tariff C.R.C. No. E-1235.
 Supplement 44 to Tariff C.R.C. No. E-1240.
 Supplement 20 to Tariff C.R.C. No. E-1247.
 Supplement 18 to Tariff C.R.C. No. E-1253.
 Supplement 20 to Tariff C.R.C. No. E-1258.
 Tariff C.R.C. No. E-1873.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48707

In the matter of the application of the Hamilton Radial Electric Railway Company, hereinafter called the "Applicant Company," for approval of supplements to its Standard Freight and Passenger Tariffs, issued for the purpose of cancellation.

File No. 15860

MONDAY, the 6th day of June, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
 S. J. McLEAN, *Asst. Chief Commissioner.*

Upon its appearing that the applicant company's line of railway has been abandoned, and that it is necessary for the applicant company's standard tariffs to be cancelled, to clear the records,—

The Board orders: That Supplement No. 1 to the applicant company's Standard Freight Mileage Tariff C.R.C. No. 5, and Supplement No. 1 to its Standard Passenger Tariff C.R.C. No. 4, on file with the Board under file No. 15860, be, and they are hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48708

In the matter of the application of the Brantford and Hamilton Electric Railway Company, hereinafter called the "Applicant Company," for approval of supplements to its Standard Freight and Passenger Tariffs, issued for the purpose of cancellation.

Case No. 3477

MONDAY, the 6th day of June, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
 S. J. McLEAN, *Asst. Chief Commissioner.*

Upon its appearing that the applicant company's line of railway has been abandoned, and that it is necessary for the applicant company's standard tariffs to be cancelled, to clear the records,—

The Board orders: That Supplement No. 1 to the applicant company's Standard Freight Mileage Tariff C.R.C. No. 1, and Supplement No. 1 to its Standard Passenger Tariff C.R.C. No. 6, on file with the Board under Case No. 3477, be, and they are hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

CIRCULAR No. 233

Re diverting and closing of highways

File No. 38307

June 6, 1932.

I am directed by the Board to inform you that Circular No. 231, dated May 18, 1932, is hereby cancelled.

In substitution thereof I am directed to inform you that, in future, except in the case of diversions, the Board will make no order, authorizing the closing of public crossings, unless, and until, the municipality have passed a by-law approving of same.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF
MARCH, 1932

Railway accidents	131, with 16 killed and 139 injured
Railway accidents at highway crossings	8, with 7 killed and 10 injured
	<hr/>
	139, 23 149
	<hr/>
	Killed. Injured
Passengers..	1 27
Employees..	5 104
Others..	17 18
	<hr/>
	23 149

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

ONTARIO

- 1 Automobile—Auto ran into side of train. Licence, Ont. EJ-462.
- 1 Automobile—Auto ran through lowered gates, into side of box-car. Licence, Ont. JS-929.
- 1 Automobile—Auto stalled on crossing. Licence, Ont. JN-92.
- 2 Automobile—Licences, Ont. MF-8S, Ont. Y-3574.
- 2 Pedestrian.

BRITISH COLUMBIA

- 1 Automobile—Auto ran into side of train. Licence, B.C. 59892.

Of the 8 accidents at highway crossings, 2 occurred at protected crossings and 6 at unprotected crossings. Three (3) of the accidents occurred during the daylight hours and five (5) at night.

OTTAWA, May 31, 1932.

The Board of Railway Commissioners for Canada

JUL 2 1932
UNIVERSITY OF TORONTO

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, June 29, 1932

No. 8

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of other Vehicles and Pedestrians at Protected Highway Crossings.

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from March 1, 1932, to May 31, 1932, show twenty cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from January 1, 1932, to March 31, 1932, and (Eastern Lines) from February 1, 1932, to April 30, 1932, show a total of forty-eight cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplors this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Mar. 7.....	1.15 p.m...	Brock street, Drummondville, Que.	Que. 81557.....	Auto broke south gate. Weather—snowing lightly.
" 10.....	20.15 K.....	95th street, crossing, Edmonton, Alta.	Alta. 57357.....	Ran into crossing gate breaking same.
" 17.....	8.30 p.m...	Front street, Orillia, Ont.	KA-887.....	Gates down; bell ringing and light on gate burning when auto approached crossing. When brakes applied auto skidded on icy street breaking centre gate off.
" 18.....	18.45K.....	M.P. 46 Viking Subd., Alta.	.....	Sleigh drove onto crossing in front of train and was struck. No injuries.
" 27.....	5.20 p.m...	Laframboise street, St. Hyacinthe, Que.	Que. 24604.....	Crossed crossing against "stop" signal. Nearly struck watchman when dodging to get by.

CANADIAN NATIONAL RAILWAY LINES—Concluded

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
April 9.....	5.00 a.m....	Kingston road, Co-bourg, Ont.	Ont. 10-452C...	Did not have truck under control approaching railway crossing.
" 28.....	6.45 p.m....	Martin street, Milton, Ont.	JC-29.....	Auto stalled with front wheels over rail in front of train; unable to reverse auto in time to avoid being struck. No personal injuries.
May 6.....	1.04 p.m....	Ontario street, Port Hope, Ont.	Ont. 10973C....	Was parked too close to track; train had to stop until truck got clear.
" 6.....	23.25K.....	Public crossing immediately east of station, Drumheller, Alta.	Alta. 39-229....	Attempted to drive over crossing in front of train. Car collided with auto, killing the driver of the auto and injuring a passenger.
" 7.....	2.03K.....	124th street, Edmonton, Alta.	Alta. 8-834.....	Travelling at high rate of speed collided with rear of engine. Failed to make regulation stop before passing over crossing.
" 10.....	10.50 p.m....	1st public crossing west of Garneau, Que.	Que. 101625....	Drove auto over track ahead of train. Auto struck by engine. No person injured.
" 12.....	11.30.....	24th street, Saskatoon, Sask.	T. 3380.....	Truck disregarded stop signal and was almost hit.
" 13.....	2.55 p.m....	Fleet & Bathurst St., Crossing, Toronto, Ont.	EL-118 L-6166..	Yard helpers standing in centre of roadway with stop signs displayed, but drivers of both cars disregarded signals and continued along Fleet street.
" 13.....	9.40 a.m....	Fleet & Bathurst St., Toronto, Ont.	M-8347; J- 5774.	Yard helpers standing in centre of roadway with stop signs displayed, but drivers of both cars disregarded signals and continued along Fleet street.
" 13.....	12.40 p.m....	Fleet and Bathurst street, Toronto, Ont.	2-556 or Z-556..	Motorcycle driver disregarded stop signals displayed by yard helpers and continued along Fleet Street at high speed.
" 18.....	10.30 p.m....	William street, Chatham, Ont.	Ont. X-8155....	Crashed into the southeast side gate breaking off portion of same.
May 22.....	14.55.....	Sixth street, Brandon, Man.	Man. 39-201....	Ignored stop signal when freight train almost at crossing.
" 24.....	6.00 p.m....	St. Henri Place crossing, Montreal, Que.	Que. 6501.....	Warning bell ringing and as gates were being lowered driver drove onto track. Gateman raised gates in order to allow auto to drive off the track.
" 28.....	14.55.....	6th avenue west, Prince Albert, Sask.	Sask. 2-281....	Auto crashed into box car.

CANADIAN PACIFIC RAILWAY—WESTERN LINES

Date and District	Time	Crossing	Auto No.	Remarks
MANITOBA DISTRICT— Jan. 9, 1932..	15 K.....	Talbot avenue, Winnipeg.	.....	Truck proceeding east on Talbot avenue failed to observe crossing gates, resulting in same being run into and damaged.
Feb. 13, 1932..	14.20 K.....	Plinquet street, St. Boniface.	T. 104892.....	Driver of truck failed to observe crossing watchman giving signal to stop and rear of truck was struck by engine 6260 backing over crossing light.

CANADIAN PACIFIC RAILWAY—WESTERN LINES—*Concluded*

Date and District	Time	Crossing	Auto No.	Remarks
SASKATCHEWAN DISTRICT— Mar. 27, 1932..	17.15 K....	Broadway, Yorkton..	6-216 1931.....	Crossed over track when stop signal up, about 30 feet ahead of engine 611.
ALBERTA DISTRICT— Feb. 12.....	20.30 K....	Second street, Medicine Hat.	C-8-048.....	Car ran into north gate breaking same.
Feb. 16.....	24.30 K....	Second street, Medicine Hat.	18-563.....	Car skidded into gates breaking same.
BRITISH COLUMBIA DISTRICT— Jan. 2.....	12.55 K....	Powell street, Vancouver.	B.C. 89-564.....	Crossed track in front of closely approaching train ignoring stop sign displayed by watchman.
Jan. 5.....	12.50 K....	" "	B.C. 106-195....	Ignored watchman's stop sign and narrowly missed being struck by engine.
" 7.....	20.40 K....	" "	B.C. 58-227.....	Ignored red light displayed by watchman.
" 28.....	7.30 K....	North Vancouver Ferry.	.....	Man rushed under No. 3 gate as it was being lowered and was knocked down.
Mar. 9.....	10.50 K....	Powell Street, Vancouver.	B.C. 93-271.....	Ignored stop sign.
" 15.....	8.00 K....	Powell street, Vancouver.	B.C. 79-800.....	Ignored stop sign displayed by watchman.
" 30.....	2.28 K....	North Vancouver Ferry.	.....	Auto drove off crossing planks and dropped in between rails, having difficulty in getting out.

CANADIAN PACIFIC RAILWAY—EASTERN LINES

Date and District	Time	Crossing	Auto No.	Dangerous Practice
NEW BRUNSWICK DISTRICT— Feb. 17.....	3.15 p.m...	Douglas avenue, Saint John.	.....	Automobile turned on crossing.
" 23.....	.....	" "	J-9191.....	Auto dashed over crossing at high rate of speed.
" 27.....	7.10 p.m...	" "	J-9313.....	Auto drove into gate but stopped before breaking same.
Mar. 9.....	3.05 p.m...	" "	.....	Auto dashed under gates while same were being lowered.
" 26.....	4.40 p.m...	" "	J-4044.....	Auto turned on crossing.
" 30.....	.....	" "	J-7023.....	Auto dashed over crossing at high rate of speed.
April 14.....	.....	" "	.....	Sedan car dashed over crossing at high rate of speed.
" 29.....	.....	" "	.....	Auto drove under gates while same were being lowered.
Mar. 19.....	5.30 p.m...	Fairville, Saint John..	C-4433.....	Auto broke tip off west gate.
" 24.....	10.20 p.m...	" "	J-7797.....	Auto broke west gate. Bell was ringing at the time.
" 26.....	.....	" "	J-4012.....	Auto broke gate on west side of crossing, bell was ringing.
April 15.....	.....	" "	J-4112.....	Auto drove under gates while they were being lowered and stopped under same.
QUEBEC DISTRICT— Mar. 31.....	.....	St. Joseph street, Farnham.	X-1433.....	Car turned off St. Joseph street and approached St. Louis street crossing at high rate of speed. Gates were down and driver went around end of gate and over crossing and turned into yard.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—Continued

Date and District	Time	Crossing	Auto No.	Dangerous Practice
QUEBEC DISTRICT				
— <i>Contc.</i>				
Feb. 9.....		Crown street, Quebec.	Que. 11310.....	Engine had passed over crossing. Gatemen then lifted gates on south side, when auto ran over crossing and broke north-east gate.
Mar. 23.....		“ “	Que. L-164.....	Auto approached at moderate speed from south and broke south-east gate arm and moving ahead ran into engine.
April 20.....		St. Valier street, Quebec.	109098.....	Car travelling from south side of crossing passed car already standing at crossing and proceeded to go over crossing, being caught between gates which had been lowered on north side. Before gateman had time to raise south side gates which had been lowered by him, auto backed up and broke south-east gate.
Mar. 2.....		Gouin Blvd., Bordeaux.	Que. F-9309.....	When gateman was giving clearance at Gouin Blvd., gates were down and the alarm bell was ringing when a truck went through one gate and broke it completely.
“ 11.....		Raglan street, Renfrew.	Ont. LT-91.....	Auto ran into gate breaking same.
ONTARIO DISTRICT—				
April 2.....	10.20 a.m...	Kingston road, west of Cobourg, mileage 30-23, Oshawa S.D.	Mich. 480-166....	Auto skidded on roadway through crossing gates and stalled on track in front of train. Was struck and demolished.
“ 4.....	5.30 p.m...	Scugog street, Bowmanville.	25604 C.....	Gates were down for work train when truck struck gate and broke through.
Feb. 2.....	6.23 p.m...	Eramosa Rd., Guelph	.....	Auto skidded on icy pavement and struck gate arm, breaking it.
“ 4.....	4.53 p.m...	“ “	JD-966.....	Auto ran into post, west side, breaking casting.
Mar. 6.....	9.55 p.m...	William street, Chatham.	X. 5-046.....	Auto ran into and broke north-east and north-west crossing gate arms.
Feb. 23.....	7.57 a.m...	Dundas street, Cooksville.	37-016 C.....	Truck failed to observe wig-wag working or hear crossing bell ringing or engine of passenger train whistling and was struck.
Mar. 21.....	8.40 a.m...	Quebec street, London	T-5796.....	Yard engine just about to cross street when auto going south passed over tracks, disregarding watchman's stop sign.
“ 21.....	3.30 p.m...	Centre street, Chatham.	.....	As north gate just about lowered Ford sedan travelling at high rate of speed crashed through north gate arm, breaking it and drove on over crossing without stopping.
“ 27.....	1.30 p.m...	Adelaide street, London.	V 1-909.....	Auto passed watchman's stop sign.
“ 28.....	4.00 p.m...	“ “	V-780.....	Auto passed watchman's stop sign and crossed tracks in front of coaches.
April 9.....	4.33 p.m....	“ “	T-2684.....	Auto disregarded watchman's stop sign, and passing standing autos, crossed tracks in front of passenger train.
“ 24.....	3.00 p.m...	“ “	T-7617.....	Auto passed watchman's stop sign as yard engine approached crossing.
“ 24.....	3.00 p.m...	“ “	T-331.....	“ “

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Concluded*

Date and District	Time	Crossing	Auto No.	Dangerous Practice
" 29.....	3.05 p.m...	" " ..	U-1834.....	Auto disregarded watchman's stop sign and crossed tracks in front of engine.
Feb. 22.....		Front street West, Toronto.	K-6049.....	Auto ran into and damaged gates after they had been lowered.
Mar. 7.....		" " ..	Z-8164.....	Auto travelling east on Front street ran into and damaged No. 5 gate.
" 8.....		" " ..	.....	Auto turned sharply to south side of street, striking and damaging No. 2 gate.
" 22.....		" " ..	M-2409.....	Auto ran into and damaged No. 6 gate.

Description of work done	Date	Time	Place	Remarks
Work done on the 1st of May	1st May	10.00	10.00	10.00
Work done on the 2nd of May	2nd May	10.00	10.00	10.00
Work done on the 3rd of May	3rd May	10.00	10.00	10.00
Work done on the 4th of May	4th May	10.00	10.00	10.00
Work done on the 5th of May	5th May	10.00	10.00	10.00
Work done on the 6th of May	6th May	10.00	10.00	10.00
Work done on the 7th of May	7th May	10.00	10.00	10.00
Work done on the 8th of May	8th May	10.00	10.00	10.00
Work done on the 9th of May	9th May	10.00	10.00	10.00
Work done on the 10th of May	10th May	10.00	10.00	10.00



The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, July 1, 1932

No. 9

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ORDER No. 48733

In the matter of the application of the Canadian Northern Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its line revision between mileage 132·16 and 133·74 Brazeau Subdivision, in the Province of Alberta.

File No. 15321.39

SATURDAY, the 11th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its line revision between mileage 132·16 and 133·74 Brazeau Subdivision, in the province of Alberta.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48736

In the matter of the Order of the Board No. 45155, dated August 2, 1930, as amended by Orders numbered 46471 and 47962, dated respectively March 27, 1931, and January 12, 1932, authorizing and directing the Corporation of the Town of Walkerville, in the Province of Ontario, to construct a subway under the tracks of the Pere Marquette and the Lake Erie and Detroit River Railway Companies on Wyandotte Street; and Order No. 48397, dated April 7, 1932, providing for a contribution of 40 per cent from "The Railway Grade Crossing Fund" from the amount paid to this fund for the relief of unemployment, not to exceed the sum of \$100,000; the question of the apportionment of the remainder of the cost of construction, and the maintenance, being reserved for further consideration.

File No. 27929.40

TUESDAY, the 14th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Windsor, November 19, 1931, in the presence of counsel for the Pere Marquette and the Lake Erie and Detroit River Railway Companies, the Canadian National Railways, the town of Walkerville, city of East Windsor, city of Windsor, Hydro-Electric Power Commission of Ontario, and Ontario Hydro-Electric Railways, and what was alleged; and upon reading the agreement, dated November 12, 1930, entered into between the town of Walkerville and the city of East Windsor, whereby the town of Walkerville holds itself bound to meet the burden of whatever sum, if any, the Board shall regard as properly chargeable against the said city of East Windsor in respect of the subway,—

The Board orders:

1. That the cost of constructing the said subway under the tracks of the Pere Marquette and the Lake Erie and Detroit River Railway Companies on Wyandotte street, in the town of Walkerville and province of Ontario, after deducting from the general cost (estimated at approximately \$389,000) the following, namely,—

(a) amount provided out of "The Railway Grade Crossing Fund" from the amount paid to the said fund for the relief of unemployment	\$100,000
(b) paving and sidewalks through the subway, chargeable against the town of Walkerville	8,100
(c) approaches—of which one-half is paid by the Dominion and the province of Ontario, the balance being charged against this work	42,115
(d) extra hand-labour cost	20,600
(e) under agreement of November 12, 1932, the town of Walkerville to bear whatever sum the Board might charge against the city of East Windsor—the sum found is	20,000

be divided as follows: sixty per cent by the town of Walkerville, twenty per cent by the Pere Marquette and the Lake Erie and Detroit River Railway Companies, ten per cent by the city of Windsor, and the remainder by the Hydro-Electric Power Commission of Ontario and the Ontario Hydro-Electric Railways.

2. That any excess of cost over and above the estimated amount be borne and paid by the town of Walkerville; and that any reduction in cost redound to the benefit of the said town.

3. That the cost of maintaining the said subway be divided as follows: sixty per cent by the town of Walkerville, twenty per cent by the Pere Marquette and the Lake Erie and Detroit River Railway Companies, ten per cent by the city of Windsor, and ten per cent by the Hydro-Electric Power Commission of Ontario and the Ontario Hydro-Electric Railways.

4. That the cost of lands and damages necessarily arising in connection with the construction of the said subway be undertaken by the town of Walkerville, and the expense so incurred adjusted in the final settlement.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48745

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 16th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in the following schedules, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of sub-section 2 of the said section 3, namely:—

Supplement 31 to Tariff C.R.C. No. E-1230.

Supplement 7 to Tariff C.R.C. No. E-1702.

Supplement 4 to Tariff C.R.C. No. E-1804.

Supplement 2 to Tariff C.R.C. No. E-1829.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48772

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 23rd day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 181 of Supplement No. 35 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of that published in the said item 181 of Supplement No. 35 to Tariff C.R.C. No. 856, approved herein, is 28 cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 48774

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 23rd day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in the following schedules filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3, namely:—

Supplement No. 1 to Tariff C.R.C. No. E-1209.

Supplement No. 13 to Tariff C.R.C. No. E-1226.

Supplement No. 45 to Tariff C.R.C. No. E-1240.

Supplement No. 36 to Tariff C.R.C. No. E-1244.

Supplement No. 5 to Tariff C.R.C. No. E-1804.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 48773

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 23rd day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 871, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 871, approved herein, are as follows, namely:—

To	Rates in cents per 100 pounds
Sherbrooke, P.Q..	26
Farnham, P.Q..	26
St. Johns, P.Q..	26
Montreal, P.Q..	26
Ottawa, Ont..	29½

S. J. McLEAN,
Assistant Chief Commissioner.

[The text on this page is extremely faint and illegible. It appears to be a list or a series of entries, possibly related to a botanical or geographical study. The structure suggests a table with multiple columns, but the specific details cannot be discerned.]

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, July 15, 1932

No. 10

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ORDER No. 48785

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.10

SATURDAY, the 25th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 4 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 4 to Tariff C.R.C. No. 3, approved herein, is 10 cents per net ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48786

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

SATURDAY, the 25th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Iron Bound Cove, Minto, and Pennlyn, New Brunswick, to Chipman, New Brunswick, on supply coal for the Canadian National Railways in Supplement No. 12 to Tariff C.R.C. No. 160, filed by the

Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 12 to Tariff C.R.C. No. 160, approved herein, is 40 cents per net ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48787

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 27th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item No. 444 of Supplement No. 4 to Tariff C.R.C. No. E-4370, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item No. 444 of Supplement No. 4 to Tariff C.R.C. No. E-4370, approved herein, are as follows:—

	Rates in cents per 100 pounds
In boxes or crates.. . . .	587½
In bundles.. . . .	894

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48788

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Truro, Nova Scotia, to Middleton, Nova Scotia, in item 35-A of Supplement No. 19 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 35-A of Supplement No. 19 to Tariff C.R.C. No. 811, approved herein, is 10½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48789

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item No. 90 of Supplement No. 27 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, the Dominion Atlantic Railway Company's proportion to be reported as 9·7 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal rate which but for the said Act would have been effective in lieu of that published in the said item 90 of Supplement No. 27 to Tariff C.R.C. No. 812, approved herein, is 12·7 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48790

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 127-A and 240-C of Supplement No. 34 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 127-A and 240-C, approved herein, are as follows:—

For	Rates in cents per 100 pounds
Item 127-A.	10
Item 240-C.	9

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48791

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 870, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. 870, approved herein, is 23 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48792

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 27th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in Supplements Nos. 57 and 6 to Tariffs C.R.C. No. E-1235 and C.R.C. No. E-1804, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48804

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.17

TUESDAY, the 28th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 37, filed by the Cumberland Railway and Coal Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 37, approved herein, are the 10th class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48805

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

TUESDAY, the 28th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 41, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 41, approved herein, are the 10th class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48806

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

TUESDAY, the 28th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Iron Bound Cove, Minto, and Pennlyn, New Brunswick, to Chipman, New Brunswick, on supply coal for the Canadian National Railways, in Supplement No. 12 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 12 to Tariff C.R.C. No. 160, approved herein, is 40 cents per net ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48807

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

TUESDAY, the 28th day of June, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 689, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. 689, approved herein, is 2 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 48825

In the matter of the Order of the Board No. 48685, dated May 28, 1932, apportioning the cost of maintaining three subways,—one under the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian Pacific Railway Company and the Brampton Subdivision of the Canadian National Railways at Bloor Street; one under the Canadian Pacific and the Canadian National Railways on Royce Avenue; and one under the Newmarket Subdivision of the Canadian National Railways on Bloor street,—all in the city of Toronto and province of Ontario.

Files numbered 32453 and 32453.6.

MONDAY, the 4th day of July, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

Upon reading what is filed on behalf of the Canadian Pacific Railway Company, and the report of the Chief Engineer of the Board,—

It is ordered: That the said Order No. 48685, dated May 28, 1932, be, and it is hereby, amended by striking out the word “tracks,” at the end of paragraph 4, and substituting in lieu thereof the words, “track drainage.”

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48831

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15.

TUESDAY, the 5th day of July, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published from Iron Bound Cove, Minto, and Pennlyn, New Brunswick, on coal for points on the Canadian National Railways in Supplement No. 13 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of The Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 13 to Tariff C.R.C. No. 160, approved herein, is 40 cents per net ton.

3. And the Board further orders that Order No. 48806, dated June 28, 1932, made herein, be, and it is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48832

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2.

TUESDAY, the 5th day of July, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board Orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 7 to Tariff C.R.C. No. E-1702.

Supplement 4 to Tariff C.R.C. No. E-1804.

Supplement 2 to Tariff C.R.C. No. E-1829.

Tariff C.R.C. No. E-1886.

Tariff C.R.C. No. E-1891.

C. P. FULLERTON.
Chief Commissioner.

ORDER No. 48830

In the matter of the application of the Lakeside Milling Company, Limited, of Toronto, Ontario, for an Order extending the time within which it may apply to the Board for leave to appeal to the Supreme Court of Canada from Order No. 48728, dated June 10, 1932, dismissing the complaint of the said Lakeside Milling Company Limited, against tariffs of the Canadian Pacific and the Canadian National Railway Companies publishing competitive rates on sack grain and grain products from the head of the lakes and certain bay ports to specific eastern Canadian destinations.

File No. 38316.

THURSDAY, the 7th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon reading the affidavit of counsel for the applicant company, dated July 6, 1932, in support of the application, and hearing the representations made by him,—

The Board orders: That the time for making application to the Board for said leave to appeal be, and it is hereby, extended until the 10th day of August, 1932.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH
OF APRIL, 1932

Railway accidents	124,	with 11 killed and 123 injured
Railway accidents at highway crossings	20,	with 7 killed and 13 injured
	144	18
		Killed
Passengers	1	15
Employees	1	87
Others	16	34
	18	136

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

QUEBEC

- 1 Automobile—Auto driver failed to stop for crossing. Que. licence T-7330.
- 1 Automobile—Auto ran into side of train. Que. licence 66445.
- 1 Horse-drawn vehicle—Attempted to get over crossing ahead of train.

ONTARIO

- 3 Automobile—Auto driver ran into side of train. Ontario licences 53439-C, ET-255, U-1278
- 1 Automobile—Auto driver failed to heed wig-wag signal. Ont. licence HB-47.
- 7 Automobile—Ont. licences HU-187, EE-150, FO-135, EE-745, FS-353, FO-695, EO-480.
- 2 Horse-drawn vehicle.
- 1 Pedestrian.

MANITOBA

- 1 Automobile—(Without licence number).

ALBERTA

- 1 Automobile—Auto driver ran into side of train. Alta. licence 18616.
1 Auto truck—Alta. licence T-7399.

Of the 20 accidents at highway crossings, 18 occurred at unprotected crossings and 2 at protected crossings. Thirteen of the accidents occurred during the daylight hours and seven at night.

OTTAWA, June 30, 1932.

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UNIVERSITY OF TORONTO
AUG 4 1932

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

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No. 11

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Rural Municipality of Webb No. 138, Saskatchewan, for an Order directing the Canadian Pacific Railway Company to open up the crossing on the road allowance between Sections 33 and 34, Township 13, Range 18, West 3rd Meridian.

(File No. 25401.3)

Consideration of the question of cost of construction and maintenance reserved by Order No. 38868, dated 24th March, 1927, authorizing the Rural Municipality of Webb No. 138, Saskatchewan, to construct a highway crossing over the Canadian Pacific Railway east of Section 3, Township 14, Range 18, West 3rd Meridian, Saskatchewan.

(File No. 25401)

Consideration of the general principles of seniority and the question of cost of construction and maintenance of highways west of Regina or Saskatoon through Saskatchewan, along the main line of the Canadian Pacific Railway.

(File No. 35699)

Heard at Regina, Saskatchewan, on Monday June 20, 1932.

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

By letter of date the 14th of July, 1926, the Rural Municipality of Webb No. 138 applied for an order to open up crossings over the line of the Canadian Pacific Railway Company between sections 2 and 3, township 14, range 18, west of the Third meridian, and also between sections 33 and 34, township 13, range 18, west of the Third meridian, in the province of Saskatchewan.

The company claims that it is senior at both crossings, but it is willing to have the crossings constructed at the expense of the municipality.

On March 24, 1927, an order of the Board was made authorizing the Rural Municipality of Webb No. 138 to construct a highway crossing over the Canadian Pacific Railway east of section 3, township 14, range 18, west of the Third meridian, in the province of Saskatchewan, and reserving the question of cost of construction and maintenance. No order has yet been made in respect of the other crossing.

The question for determination is whether the company or the municipality should bear the cost of the construction of the crossings in question.

The title of the company to its right of way is founded on an agreement entered into between the Dominion Government and the company on the 21st day of October, 1880, confirmed by statute. See chapter 1 Acts (Dominion) 1881.

By section 10 of this agreement the Government agreed to grant to the company "the lands required for the roadbed of the railway . . . in so far as such lands shall be vested in the Government."

The crossings in question are between Swift Current and Medicine Hat. The location plan of this part of the line was approved on November 24, 1882, but the actual grants of the land to the company were not made until the year 1902. These grants only cover the land contained within the sections and do not cover the land reserved for road allowances under the provisions of the Dominion Lands Act.

The survey of both of the townships involved was made prior to the filing by the company of its location plan through such townships.

The south boundary of township 13 was surveyed on July 28, 1882, and the other three boundaries including the line between it and township 14 on the 17th and 18th of August, 1882. The monuments marking the northeast corner of section 33 and the northeast corner of section 34 were erected on August 17, 1882. The other three boundaries of township 14 were surveyed on August 26, 1882. Both townships were subdivided into sections in May and June, 1883, and the completed plans approved and confirmed by the Surveyor-General on December 24, 1883. These plans show road allowances between the sections where the crossings are now applied for.

The contention is made that apart altogether from an actual survey on the land the road allowances in question are statutory road allowances by virtue of the provisions of the Dominion Lands Act.

In the present case it is unnecessary to decide the larger question of whether all lands reserved for road allowances under the Dominion Lands Act are statutory highways. Here we have an actual survey of the two townships involved made prior to the filing of the company's location plan. Counsel for the company claim that there was no survey until the plan was confirmed by the Surveyor-General, which was not until December 24, 1883, subsequent to the construction of the railway and the filing of the company's location plans.

By the Dominion Lands Survey Act of 1908, section 56, subsection 3, it is provided that

"No land shall be held to be surveyed, or resurveyed, until the official plan of the survey or resurvey has been confirmed by the Surveyor-General."

Before 1908 there was no such statutory requirement and it appears to me that in determining the priority of date between the survey of the townships and the filing of the location plan the actual date of the survey must govern.

In *Township of Caldwell v. Canadian Pacific Railway Company*, 9 C.R.C. 497, the municipality applied for a highway crossing over the line of the Canadian Pacific Railway on the town line between the townships of Caldwell and Springer. The company had no objection to the construction of the crossing but claimed that it was senior and that the cost should be on the township. The facts were as follows:—

The townships of Caldwell and Springer were surveyed in 1880. The railway was constructed in 1883. The plans of the survey do not show any reservation of road allowances, as such, along or between the boundaries of these townships, but under the system of survey when patents issued, a reservation of five per cent of the total area was made for roads with the right in the Crown to

lay roads out where necessary or expedient. Mabee, C.C., held that the municipality was senior and that the railway company should bear the cost. He said at p. 498:—

“The railway line then was constructed through these townships with the knowledge of this practice of the Department of Crown Lands. Of course, the location of the roads had not been defined at the time of construction, but that there must at some future time be highways somewhere was known, and that the five per cent was being, or would be withheld by the Crown from settlers for such purpose was also known; so if the plan had shewn a highway between these townships, the company, in that event, would have had to bear the expense of opening the road, why should the same principle not apply where the company knows the Crown will reserve a portion of the land for highways, to be located at proper and convenient points in the future? It is no greater burden upon the railway company in one case than in the other; in the one the company knows that it may be at some future time called upon to bear the expense of opening a highway; in the other it knows of the five per cent reservation in each Crown deed, but the exact point of location of highway is not known. Along the tier of lots on the boundary line between these townships the five per cent is kept out for highways; it was known this would be done, so it is no hardship to require the railway company to bear the expense of opening a highway along this boundary where the same crosses the railway right of way.”

I hold that the municipality of Webb is senior at the two crossings in question, and that the company must bear the cost of the construction and maintenance of both crossings.

OTTAWA, July 7, 1932.

Commissioner Norris concurred.

ORDER No. 48838

In the matter of the Order of the Board No. 38868, dated March 24, 1927, authorizing the Rural Municipality of Webb No. 138, in the Province of Saskatchewan, to construct a highway crossing over the Canadian Pacific Railway east of Section 3, Township 14, Range 18, West 3rd Meridian; and reserving the question of the apportionment of the cost of construction and maintenance.

File No. 25401

FRIDAY, the 8th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Regina, June 20, 1932, in the presence of counsel for the province of Saskatchewan and the railway company, and what was alleged; and upon reading the written submissions filed,—

The Board orders: That the cost of constructing and maintaining the said crossing of the Canadian Pacific Railway east of section 3, township 14, range 18, West 3rd meridian, in the province of Saskatchewan, be borne and paid by the Canadian Pacific Railway Company.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48840

In the matter of the application of the Rural Municipality of Webb No. 138, in the Province of Saskatchewan, hereinafter called the "Applicant," under Section 256 of the Railway Act, for leave to construct a highway crossing over the Canadian Pacific Railway between Sections 33 and 34, Township 13, Range 18, West 3rd Meridian, as shown on the plan and profile on file with the Board under file No. 25401.3.

FRIDAY, the 8th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Regina, June 20, 1932, in the presence of counsel for the province of Saskatchewan and the railway company, and what was alleged; and upon reading the written submissions filed,—

The Board orders:

1. That the applicant be, and it is hereby, authorized to construct the highway across the Canadian Pacific Railway between sections 33 and 34, township 13, range 18, West 3rd meridian, in the province of Saskatchewan, as shown on the plan and profile on file with the Board under file No. 25401.3, and subject to and in accordance with "The Standard Regulations of the Board Affecting Highway Crossings."

2. That the cost of constructing and maintaining the said highway crossing be borne and paid by the railway Company.

C. P. FULLERTON,
Chief Commissioner.

In the matter of the accident which occurred at Mileage 66.5, Tignish Sub-division, Canadian National Railways, Prince Edward Island, at 1.55 a.m., February 21, 1932; and the determination of the party or parties responsible for the accident.

File No. 38292.

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

Early in the morning of the 21st of February last an accident happened in a cutting known as Handrahan's Cutting, on the line of the Canadian National Railways near Tignish, on the Prince Edward Island Division, resulting in the death of four employees and injury to eleven.

Following the accident the usual investigation was made by one of the Board's Inspectors and a report made by him to the Board.

After giving the report careful consideration the Board decided that the facts justified a thorough investigation into the whole matter of responsibility for the accident and it was, accordingly, decided to hold a sittings of the Board at Charlottetown for that purpose.

The hearing was held at that point on the 28th day of June, 1932, when the evidence of all witnesses, who could throw any light on the question, was taken.

The two trains involved in the collision were No. 211 and No. 53, both third-class trains. No. 211 consisted of two box cars and a passenger car with a

baggage compartment in the forward end, and an engine with a snowplough ahead of it. She was due to leave Summerside at 12.01 p.m. o'clock and reach Tignish at 6 p.m.

No. 53 consisted of three coaches and two engines with a snowplough ahead. She was due to leave Charlottetown at 3.40 p.m., Summerside at 6.35 p.m., and arrive in Tignish at 10.15 p.m.

The collision happened at 1.55 a.m., in the morning of Sunday, February 21, 1932. The evidence shows that during the previous week there had been very heavy snow and drifts on the western, or Tignish, end of the line. All the witnesses are agreed that on Saturday, the 20th, preceding the accident, very high winds and a heavy ground drift with a temperature about zero prevailed.

Train No. 54 which left Tignish at 7.30 that morning was stalled in Handrahan's Cutting and required a gang of shovellers to release her. No. 211 left Summerside at the usual hour, and at Wellington picked up twelve snow shovellers who had boarded No. 54 after having released her at Handrahan's Cutting in the morning. When No. 211 reached Handrahan's Cutting shortly before 7 p.m. she became stalled in the snow, where she remained until 1.55 a.m. the following morning, when she was run into by No. 53.

Tignish tank is at mileage 66.1. Handrahan's Cutting is some five or six hundred yards west of the tank, and about one mile from Tignish. It is about one-quarter of a mile in length. McLeod, the roadmaster in charge from Charlottetown to Tignish gives the following description of it:—

Q. Is it a continuous cutting, or does it vary with the topography of the ground line?—A. It is just a continuous cutting. In other words there is no great embankment, it is a level piece of ground, no deep clay cutting.

Q. What is the height of it?—A. It would not be any more than three or four feet, that is, the clay cutting.

Q. All the way through?—A. In parts of it.

McLeod, the roadmaster, who had been over the line the same week, says that the snow in Handrahan's Cutting was then between five and seven feet where it had been thrown up by the plough.

Gaudet, the Section Foreman, at Tignish, who was in charge of the gang of men which released No. 54 in the morning, says that there was at that time five or six feet of snow in places over the rail on both sides of the track. Gaudet went through to Summerside on No. 54 and returned on No. 53.

One Chaisson, who was acting as section foreman in Gaudet's absence, was engaged that day with a gang of ten men shovelling out the yards at Tignish. He heard No. 211 blowing for help and with his ten men went out to the cutting and assisted the men who were trying to release No. 211. Chaisson gives the following description of snow conditions in the cutting:—

Q. How deep was the snow along beside that train?—A. It was six or seven feet deep.

Q. Was there any room for the men to work between the snow bank and the cars?—A. No, it was full.

Q. Where were they shovelling?—A. They started at the top of the cutting and shovelled down.

Q. To get down to the rail?—A. Yes.

When No. 211 stalled there was a very heavy northwest wind blowing and the temperature was about zero. The men worked until about nine o'clock but finding they were making no headway, knocked off, and went into the baggage car, the intention being to resume work when the weather should moderate.

Murray, the conductor of No. 211, got a team and drove into Tignish Station. He says he left about 8.40 and arrived at the station between 9 and

9.15 p.m. McTague, the agent at Tignish, says about 8.45, but the exact time does not matter. What took place between McTague and Murray has a very important bearing and for that reason I will quote the evidence at some length:—Murray's account of his interview with McTague is as follows:—

Q. What report did you make?—A. I told them exactly the condition, the position our train was in, and the condition where we were stalled, and that it was impossible for the men to work, that they had worked so long that it was impossible for them to work in the cold, that they were shovelling especially on one side, and the snow would come in faster than they could put it out, and that on one side they could not work at all.

Q. What did you ask for in the way of help or protection, or both?—A. I asked to get more help, more men to come out and shovel out the train, besides the number we had.

Q. What else?—A. I also told him that the condition for getting out there did not look very good, that the men could not work until the storm abated. I also told him to not come beyond the tank.

The CHIEF COMMISSIONER: Q. Who not to come beyond the tank?—A. The agent who was there at the time, not to come beyond the tank.

Mr. SPENCER: Q. What did you refer to when you said not to come beyond the tank?—A. He informed me that No. 53 train was still in Summerside, that No. 53 had not left Summerside. I told him to tell them not to come beyond the tank, and the operator at Tignish asked me would it be all right to come to the tank and I said yes, and I replied to this question to not come beyond the tank.

Q. You made that request, not to come beyond the tank?—A. Those were my words.

Q. It was all right to come to the tank?—A. But not beyond the tank.

Q. Did you remain in the office at Tignish while this communication with the despatcher was going on?—A. Yes, all the time.

Q. What information came back to you?—A. He told me that No. 53 was getting an order, that he was giving No. 53 an order.

The CHIEF COMMISSIONER: Q. The despatcher at Charlottetown?—A. Yes.

Q. He was giving No. 53 an Order?—A. Yes.

Q. For what?—A. That is just all I know, that he was giving No. 53 an order.

Mr. SPENCER: Q. That was the answer to you in response to your request?—A. Yes.

Q. Was a copy of that order delivered to you?—A. No, sir, it was not.

Murray then left the station and returning shortly afterwards had some conversation with one Justin McCarthy, a porter at the station. His evidence as to the conversation is as follows:—

Q. When you came back to the station it was McCarthy you talked with?—A. Yes, sir.

Q. Was that when you were told that No. 53 would stay at the tank?—A. Yes, sir.

Q. Not by the agent?—A. No, sir, I was not told by the agent.

Q. You say you were not told by the agent?—A. No, sir.

Q. Then any statement that No. 53 would not go beyond the tank was made to you by McCarthy?—A. He said No. 53 was still in Summerside, and I said to him "She won't come in danger if she does not go beyond the tank," and he said he would notify her.

McTague, the agent at Tignish, gives the following account:—

Q. What was the first intimation you had of train No. 211 being in trouble?—A. I was called on duty by our freight porter, somewhere around 8.45. He told me that Conductor Murray was there, and that his train was stalled, and wanted me to come on duty and report to the despatcher at Charlottetown.

Q. What report did he ask you to make to the train despatcher about No. 211?—A. He told me to tell Charlottetown that his train was stalled west of Tignish tank. I called up the despatcher and told him it was still there. The despatcher asked me if the main line was clear behind, if there were any cars between the tank and his train. I asked Conductor Murray that, and he said, No, that everything was clear, and the despatcher said then, tell him to say that *we are going to let No. 53 go to the tank*. I gave that instruction to Mr. Murray that the despatcher said *he was letting No. 53 go to the tank*.

Q. No. 53 was to go to the tank?—A. It was to go to the tank.

Q. Was that communicated to you in the form of a train order?—A. No, verbally, talking to the despatcher over the wire.

Q. What about the train order that Conductor Murray heard about?—A. I don't know anything about that. I did not tell him anything about a train order. There was no train order mentioned at all.

Q. Did you not tell Conductor Murray that they were giving train No. 53 an order?—A. No, I did not.

Q. Was he there all the time you were communicating with the despatcher?—A. He was there when I got that word from the despatcher. Tell him, he says, *we are going to let No. 53 go to the tank*. I gave that word to Murray, and then he left the office somewhere about nine o'clock. I was still talking with the despatcher, and he told me that I would not be required on duty any longer. Of course then I was going to my own home, and I found that Mr. Murray was not there. I then went to work and saw the porter, Mr. McCarthy, and told him that if Mr. Murray came back again to tell him that there was nothing further, only what the despatcher said, that *he was letting No. 53 go to the tank*. There was no order given by me that she was going to stay at the tank, beyond the tank, or anything else. I only repeated what the despatcher told me, that *he was letting No. 53 go to the tank*.

Q. You left that message with your assistant, Mr. McCarthy?—A. Yes.

Q. To tell Conductor Murray?—A. To tell Conductor Murray if he should return to the office again. That was after I was through with the despatcher.

Mr. McCarthy in his evidence says that he told Murray "that *No. 53 was coming to the tank*."

McCormack, the train despatcher at Charlottetown, says that "about 8.45 or 9 o'clock the agent at Tignish reported that No. 211 was stalled, and they had a bunch of snow shovellers with them. I don't know how many. That it was drifting quite heavily and at the present time they could not work, but if it abated they would not have much trouble in getting out, after they got to work."

Q. Did you state definitely to Tignish that you would allow No. 53 to go to the tank?—A. The idea in asking that was that sometimes in a cutting they cut off the rear cars before they go into it, and I was wanting to be sure that she would be up to the tank in case it would be a long time there, to see that the track was clear, because it might be there for a time; I wanted to make sure that there were no cars east of the tank.

Q. You heard the evidence of McCarthy?—A. Yes.

Q. He said that the agent told him to tell Conductor Murray that No. 53 was being allowed to come to the tank?—A. Yes.

Q. Is that correct?—A. That she would be allowed to come to the tank.

Q. Was that correct?—A. If the line was clear she would go to the tank, that there were no cars left behind No. 211, that she would go to the tank. That is not saying that she would go no further than that.

Taking the evidence of all the witnesses it is clear beyond question that whatever McCormack's intention may have been, the message he sent to Murray was that he would allow No. 53 to go to the tank. On the faith of this message Murray assumed that No. 53 would receive orders not to go beyond the tank. He returned to his train and gave his tail brakeman, McDonald, leave to go home to Tignish for his supper. Up to that time McDonald claims he had been out at the rear of No. 211 providing the protection required by the rules. I will deal with this phase later.

Murray thought that protection at the rear of his train was no longer necessary and nothing was thereafter done to protect it.

Leaving No. 211 stalled in Handrahan's Cutting with no protection of any kind, let us return to No. 53. Delayed two hours and forty minutes on account of making connection with the boat train, No. 53 was still at Summerside when the despatcher at Charlottetown received the report about No. 211 being stalled at Handrahan's Cutting. Asked "what action did you take?" McCormack replied,—“As a precautionary measure I gave an order to No. 53—No. 31—to look out for No. 211 stalled in Handrahan's Cutting, 200 yards west of Tignish tank.”

It should be explained here that when McCormack was talking to McTague, he asked him where No. 211 was stalled and McTague told him 200 yards west of the tank, which explains why Handrahan's Cutting was described in the order as 200 yards west of the tank.

In addition to issuing the so-called 31 order to No. 53 McCormack says he got in touch with Conductor Warren, who was in charge of No. 53, and advised him that No. 211 was stalled in Handrahan's Cutting. Warren gives the conversation as follows:—

“He told me that No. 211 was stalled west of the tank, and that he was going to let us go; Murray said that we were all right to the tank. He meant by that that there were none of his cars extending east of the tank, that he had not drawn his train and gone ahead with the engine, that he had his train with him.” .

Copies of this order issued to No. 53 were delivered to the two engineers and the rest of the crew knew of its contents before the train left Summerside. No. 53 then proceeded to Tignish tank, took water and, seeing nothing in the nature of protection for No. 211, assumed that she had managed to get through to Tignish. They accordingly started for Tignish. Moore, the driver of the leading engine on No. 53 was looking out of the window until the plough went into the cutting, when on account of the flying snow he shut his window and went in blind hitting the rear of No. 211 approximately 350 yards inside the cutting.

There are so many features of the case which indicate loose and careless methods of operation that in dealing with them it is difficult to know just where to begin.

Dealing with them in order of time, the first matter is the question of the protection which should have been given to No. 211 when it became stalled in the snow. In the first place it was the duty of the engineer to whistle out the flagman. This was not done.

Rule 99 of the Operating Rules of the Canadian National Railways lays down specific instructions as to the protection required in a case where a train stops on the main line under circumstances in which it may be overtaken by another train. It provides:—

99. When a train stops on the main track under circumstances in which it may be overtaken by another train a flagman must immediately go back with flagman's signals to protect the train. Under the conditions specified the distance should be at least:

In day time, if there is no down grade towards train within one mile of its rear, and there is a clear view of its rear 6,000 feet from an approaching train, 1,500 feet (about 12 telegraph poles).

At other times and places, if there is no down grade towards train within one mile of its rear, 3,600 feet (about 28 telegraph poles).

If there is a down grade towards train within one mile of its rear, 5,400 feet (about 42 telegraph poles).

The flagman must, after going back the specified distance, take a position where there will be an unobstructed view of him from an approaching train of, if possible, 1,500 feet, first placing two torpedoes, not less than 100 nor more than 200 feet apart, on the rail on the same side as the engineman of an approaching train 300 feet beyond such position. The flagman must remain in such position until recalled or relieved.

If recalled before another train arrives, he must, in addition to the two torpedoes, leave a fusee burning red at the point he returns from, and while returning to his train (when snow ploughs or flangers may be running, curvature, weather, or other conditions governing) a fusee burning red must be placed at such points or times as the flagman may find necessary to insure full protection.

To maintain the proper interval between trains a fusee burning red must be left by the protected train at the point from which it moves.

The flagman must always on the approach of a train display stop signals and, if not already done, place two torpedoes on the rail as before described, and then return 300 feet nearer the protected train.

The front of the train must be protected in the same way when necessary by the front brakeman or, if there is no front brakeman, by the fireman.

Flagmen must each be equipped for day time with a red flag 22" x 28", on a staff, at least six torpedoes and five red fusees, and for night time and when weather or other conditions obscure day signals with a red light, a white light, a supply of matches, at least six torpedoes and five red fusees.

A train should not stop between stations at a place where the view from a following train is obstructed.

When a train is moving under circumstances in which it may be overtaken by another train, such action must be taken as may be necessary to insure full protection; lighted fusees, red or yellow as the case may require, must be thrown off at proper intervals.

When a flagman goes out to protect a train his place will be filled by the person designated by the conductor.

McDonald, the rear brakeman on No. 211, stated in his evidence that when the train stopped he went back 2,800 yards and placed torpedoes on the rails. He says he remained out until 9.30 or 9.15, when he returned to his train on account of the cold, but he admits he left no fusees burning red as required by the rules. From his demeanor on the witness-stand and the very unsatisfactory manner in which he gave his evidence, I am satisfied that he is not telling the truth and that he never at any time went back to protect his train.

It was the duty of Conductor Murray to see that his train was properly protected, but he was unable to say whether McDonald ever was out.

Mr. Hibbits, who represented the Railway Employees, struck a note during the hearing which rather surprised me and, I think, must have surprised the trainmen present at the hearing. Having McDonald's interests in mind, he argued that there were trains operating through some districts where the temperature falls to 65 degrees below zero, and that under such circumstances "it is humanly impossible for trainmen to go out and flag trains there." Apart from the fact that the observation has no bearing whatever on this case, it would take a lot to convince me that any conscientious and properly trained railway man would allow his train to go unprotected even under the extreme circumstances suggested by Mr. Hibbits.

We next come to the events which occurred at Tignish when Murray went there and reported the condition of his train. Briefly, his evidence is that he asked McTague that No. 53 should not come beyond the tank, and was informed by McTague that No. 53 was getting an order. He neither asked for nor received a copy of this order, but was satisfied to assume that the order was that No. 53 should not come beyond the tank. Subsequently, he saw the porter, McCarthy, and said to him, "She won't come in danger if she does not go beyond the tank, and he said he would notify her."

According to the evidence of both McTague and McCarthy, the message delivered to Murray was that the despatcher was letting No. 53 go to the tank. The despatcher admits that this is correct, so we can take it as established that this was the message given to Murray.

Murray returned to his train fully convinced that No. 53 would have orders not to go beyond the tank. Kelly the fireman on No. 211 says that when Murray returned he said to him "at Charlottetown I got an order that No. 53 would come as far as the tank and stay at the tank unless we get through." Murray says: "When I came back from Tignish I went to the cab of the engine; the driver was not there, but I found him in the baggage car. I explained what had transpired at Tignish and what the agent said about giving No. 53 an order. I felt confident that she would not come beyond the tank. I explained that to him. I explained that to the engine driver Mr. Hessian."

Murray on his return from Tignish also permitted McDonald to go home to Tignish where he remained all night.

Apart from the marker lights on the rear, no protection whatever was given No. 211 from the time Murray returned up to the time of the collision.

Costain, an engine cleaner at Tignish, heard that No. 211 was stalled and from Tignish walked out to the cutting arriving there after 11 p.m., and remaining there until after the accident. He found Kelly, the fireman, alone in the engine, and Conductor Murray, Hessian the engineer, and Harper a brakeman on No. 211, together with the snow shovellers, all in the car. In his evidence he said that one of the snow shovellers came up to the engine and said that the other train was at the tank. When he heard that he went to the baggage car. Murray, Hessian and Harper were there. He asked them if they knew about No. 53 being at the tank and they said yes, they knew. When he got off the car he could see the headlight of No. 53 at the tank. He started to walk down to the tank and No. 53 passed him "at the edge of the cutting." He tried to signal it but failed. I believe the evidence of this witness and accept his story as true. It shows clearly two things:—

- (1) That the headlight of No. 53 at the tank could be seen from No. 211, and
- (2) That the crew of No. 211 were not even keeping a lookout for the arrival of No. 53 at the tank.

Murray had no justification for relying on verbal information from the agent or anyone else, or for neglecting to obey the operating rules requiring

him to protect his train. He admits he knew that rear end protection could be obtained by means of an order, and that without such order Rule 99 above quoted applied. Knowing all this he simply took a chance on the despatcher not permitting No. 53 to go beyond the tank. While it in no way excuses him, I am satisfied that he was, as he says, fully convinced that the despatcher had given orders to No. 53 not to come beyond the tank.

The message from the despatcher, McCormack, communicated to him by the agent, McTague, was solely responsible for this conviction on his part.

Now let us examine McCormack's connection with the matter with a view to seeing whether any responsibility rests on him. On Saturday, February 20, McCormack was on duty from 2.30 until 10.30. He knew of the weather conditions and of the fact that No. 54 had been stalled in Handrahan's Cutting in the morning. According to his evidence the report that he received from McTague about nine o'clock that evening was as follows:—

"No. 211 was stalled, and they had a bunch of snow shovellers with them, I don't know how many, that it was drifting quite heavily, and at the present time they could not work, but if it abated they would not have much trouble in getting out, after they got to work."

As to the latter part of his statement, namely, that "if the storm abated they would not have much trouble in getting out," neither Murray nor McTague mention that any such statement was made, and in the light of the evidence as to the actual position of No. 211 it is more than doubtful if any such statement were ever made. However that may be, let us consider what he did.

After carefully inquiring whether there were any cars east of the tank, he told McTague *to tell Murray*, "we are going to let No. 53 go to the tank." Following this message one would expect that he would have issued an order authorizing No. 53 to go to the tank, but instead he gave No. 53 an order to look out for No. 211 stalled in Handrahan's Cutting.

In the light of the order he actually issued, what possible object had he in giving the message he did to Murray? The only effect it possibly could have, and which in fact it did have, was to mislead Murray into thinking that No. 53 would not be permitted to go beyond the tank. In attempting to explain his message McCormack says:—

"That is not saying that she would not go farther than that."

Surely the reasonable inference to be drawn from the words of the message is that she would not go beyond the tank.

When No. 211 was first stalled shortly before 7 p.m., her crew no doubt surmised that the only train following them that night was No. 53, which was due at Handrahan's Cutting about 10.10 p.m., and this probably accounts for their failure to put out protection immediately. But it is inconceivable that if Murray had not received the message sent him by McCormack, he would not have later on put out the necessary protection.

In my view the order given to No. 53 should never have been given. The safe course under the conditions existing on the night in question was to have kept the agents both at Alberton and Tignish on duty and not to have permitted No. 53 to leave Alberton until No. 211 reached Tignish. In the alternative the despatcher might have given No. 53 an order to run to Tignish tank and to protect against No. 211 from Tignish tank to Tignish.

Now let us examine the excuse put forward by the crew of No. 53. In the first place Moore, the head engineer on No. 53, raises a question as to the meaning of the order that was issued to his train. It reads, "Look out for No. 211 stalled in Handrahan's Cutting, 200 yards west of Tignish tank." Moore says

it means to look out for protection. McEwan, the Chief Despatcher at Charlottetown, says it means to look out for equipment. Moore puts his case in this way. He says:—

“There seems to be quite a difference of opinion, especially in regard to the way Chief Train Despatcher McEwan gives his interpretation of the fulfilling of that order we held. We claim, and have always been led to believe, that it was the protection we had to look out for, not the equipment. According to Mr. McEwan’s definition, it is the equipment regardless of the protection. He claims that we should have gone to the cutting that night expecting to find the train still stalled there. The form of order we held was put out in instances on the main line, lots of times. Rule 100 states that it is not safe to leave a car on the main line, even under train protection. It must be protected by torpedoes, which gives the trainmen a chance. Also Form B orders are very similar in regard to their definitions, that the second train must run, looking out for the first train ahead until the order is fulfilled. If it is the equipment that has to be looked out for, it is impossible to run trains over the line. Trains have been making schedule time, the regular trains on that order, and have been making it right along. If it is equipment that has to be looked out for regardless of protection, it is impossible to do it. If it is the equipment that has to be looked out for, every point is a point of restriction, all curves, at any place. A regular train cannot possibly run more than a few miles an hour through these places.”

The observations made by Mr. Moore with regard to one train following another train have no application to a case when the train ahead is known to be stalled in a definite place. In answer to a question put by Mr. Commissioner Stone, he said:—

“We have always been instructed that it was protection we had to look out for, and if there is any change we are not aware of the fact, as far as the form of the order is concerned.”

Mr. McEwan gives his interpretation of the order as follows:—

Q. What do you consider is a proper fulfilment of the order?—A. When they arrive at the locality they are to keep a sharp lookout for either the train or the crew, which may be on the main line, or if the trouble is ahead, and if they arrive at the locality and do not find an obstruction there, I would say the order was fulfilled, and they were at liberty to go ahead. But they have to make sure the trouble is where the order says it is.

Q. Is it your view that this train No. 53, not finding No. 211 two hundred yards west of the tank, had fulfilled that order?—A. No, sir, because Handrahan’s Cutting was mentioned in the order, and on the evidence before the Superintendent the men swore that they understood No. 211 was in Handrahan’s Cutting, and I would not consider that the order was fulfilled until that train had arrived at Handrahan’s Cutting and explored it thoroughly to see whether the train was there or not.

On the other hand McCormack says that in giving the order he wanted to convey the idea to them to be careful, so that they would be careful *to look out for signals, No. 211’s signals*, as he would in a case of that kind.

Had the order simply read “Look out for No. 211 stalled in Handrahan’s Cutting”, there could not be any question about its meaning. This language is in no way ambiguous. It is clear and simple. To make it mean what Moore says he understood it to mean, you must add words which are not there. It would not be possible to operate trains safely if every trainman were to be per-

mitted to interpret train orders as meaning something other than what they actually say. Here however, the words "200 yards west of Tignish Tank" were added. It may be that this reference to some extent deceived the crew on No. 53. One thing is perfectly clear, that the crew on No. 53 when they found no protection out for No. 211 in the 500 to 600 yards between the tank and the cutting, were fully convinced that No. 211 had got out of the snow. It also further appears that they interpreted the order to mean that they were to look out only for protection. However that may be, I cannot by any means hold them blameless for doing what they did. They knew that when they left Summerside, No. 211 was stalled in Handrahan's Cutting. When they arrived at the tank they could see no indication of any protection for her, but one would expect careful men to make sure that she had got out of the cutting before they themselves rushed blindly into it. They did not even consult together as to what should be done under the circumstances, which strikes me as somewhat remarkable.

Before leaving the subject, I want to observe that to my mind the management in handling No. 53 in the way they did gave little consideration to the safety and despatch of the passengers carried by that train. She was sent out of Summerside headed for Tignish with full knowledge of the fact that No. 211 was stalled in the snow at Handrahan's Cutting, and without knowing when she was likely to be released. Under such conditions it is hard to understand why every operator on the line, including the Despatcher at Charlottetown, should have been permitted to go off duty.

McTague was called on duty at Tignish at 8.45 p.m. to deliver Murray's message to Despatcher McCormack, and was relieved from duty by McCormack about 9.15. McCormack went off duty at 10.30 p.m. The accident was at 1.55 a.m. and the relief train did not reach the wreck until 9.10 a.m., although the distance was only about 67 miles.

Another element which may have contributed to the accident was the snowplough on No. 53, which was a train carrying passengers. On the hearing, Mr. J. E. Mitchell, General Chairman of the Brotherhood of Locomotive Engineers, appeared and filed a strong protest against the practice of operating snowploughs ahead of engines on passenger trains.

Not only is the view of the engineer obscured, but the danger of derailment is much greater. In the year 1924, the Brotherhood complained about this practice to the Board, and the matter was taken up with Mr. L. S. Brown, then General Manager of the Atlantic Division. At that time, Mr. Spencer, the Chief Operating Officer of the Board, prepared a memorandum for the guidance of the company, which reads in part as follows:—

"There is no complaint and no question about the snowplough operation on the main lines of the Atlantic Region, it being definitely arranged and provided for by wing snowplough operated by an engine and crew not handling other cars in the train. Mr. Barker pointed out that on many of their small branch lines where the traffic was extremely light and there was no operation at night, that in order to start the train out in the morning it was necessary to put a snowplough (wedge type) on the front of the train to enable it to get through, and, as the majority of these branch lines operated only mixed trains and had only sufficient motive power assigned to run the regular trains, that if they were required to operate the snowplough without other cars it would mean cancelling the regular train or delaying it until the engine could make the run over the branch and back again, which in some cases would take hours, the regular train service would be badly disorganized, whereas where the use of these snowploughs was permitted they were able to run the trains according to schedule and perform the service. In many cases they found they had very few, if any, passengers."

"In my opinion the operation of the small branch lines, where the trains lay up at the dead end overnight, and where the main line connection is not a divisional point, nothing better than to put the wedge plough ahead of the locomotive of the mixed train could be provided for, but, where the main line connection of the branch line is a divisional point, and in the case of Dartmouth subdivision which is 81.80 miles long, the Centreville Subdivision between Saint John and Fredericton, the Nashwaak Subdivision, 109.75 miles, and the St. Quentin Subdivision 105.76 miles, should I think be taken care of by the same class of service as is given on the main line, except that the prohibition should not be absolute in cases of severe storms occurring when the motive power is not available to run both a mixed train and a snowplough. I note that the Tormentine Subdivision is now operated by wing ploughs the same as the main line, and would suggest that this be continued."

A copy of this memorandum was sent to Mr. Brown, and he was asked if he would undertake to carry out the proposed arrangement as set out in the memorandum, and by letter under date of February 11, 1924, he replied that "we will endeavour to carry out the proposed arrangement."

If this arrangement had been adhered to and no plough had been attached to No. 53, it is possible that the engineer would have seen the marker lights of No. 211 in time to prevent the collision.

While I appreciate that the officials in sending out No. 53 with a snowplough ahead of the engine were acting in what they believed to be in the interests of economy, the result has shown it to have been anything but economy, and I am very decided in the view that the practice of attaching snowploughs to passenger train engines should be abandoned.

For the reasons that I have given, the Board directs that the Canadian National Railways discharge from their employment Murray and McDonald, the conductor and brakeman of No. 211; and that Warren, the conductor, and Moore and Coyle, the two engineers of No. 53, be suspended for a period of six months.

The Board further directs that McCormack, the train despatcher at Charlottetown, be suspended for a period of six months.

OTTAWA, July 19, 1932.

Commissioner Stone concurred.

ORDER No. 48883

In the matter of the accident which occurred at mileage 66.5, Tignish Subdivision, Canadian National Railways, Prince Edward Island, at 1.55 a.m. February 21, 1932.

File No. 38292

WEDNESDAY, the 20th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the evidence taken at the hearing of this matter held at Charlottetown, Prince Edward Island, on the 28th day of June, 1932, for the purpose of determining the party or parties responsible for the accident, and for the reasons set forth in the judgment fixing such responsibility,—

The Board directs: That the Canadian National Railways discharge from their employment Murray and McDonald, the conductor and brakeman of train No. 211; and that Warren, the conductor, and Moore and Coyle, the two engineers of train No. 53, and McCormack, the train despatcher at Charlotte-town, be suspended for a period of six months.

C. P. FULLERTON,
Chief Commissioner.

Application of the employees of the Michigan Central Railroad (the N.Y.C.R.R. Co., Lessee) at Montrose Yards, Township of Stamford, County of Welland, Ont., the Corporation of the City of Niagara Falls, and the Corporation of the Township of Stamford, Ont., for an Order restraining the railway company (N.Y.C.R.R. Co.-Canada Southern Railway) from any action relative to the distribution of cars which will result in the removal, closing or abandonment of Montrose yards and the throwing out of employment the railway men there engaged; and for such further and other relief as the Board may deem meet and proper.

File 36800.1

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The division of the railway concerned has its headquarters at St. Thomas, Ont. It has its western limit at Windsor, Ont. The territory from Windsor to Montrose is known as the Canada Division. There are located at St. Thomas the divisional offices under the jurisdiction of the superintendent; the divisional engine house and engine shops under the jurisdiction of the master mechanic; and the divisional car department shops under the jurisdiction of the general car foreman.

In handling the through freight from Windsor, the present method is: After a through freight is made up in Windsor yard, a road crew consisting of engineer, fireman, conductor and two brakemen, who live at St. Thomas, are placed in charge of the train and they pull to St. Thomas, Ont., at which point another road crew consisting of engineer, fireman, conductor and two brakemen, living at St. Thomas, take charge of the train and handle it through to Montrose Yards. On arrival at Montrose Yards, hereinafter spoken of as Montrose, certain yard crews deliver that train to the connections at Suspension Bridge, N.Y., these being the New York Central, the Lehigh Valley, and Erie Railroad companies.

The change proposed in respect of this movement is as follows: The road crew, constituted as already set out, will take care of the through train at St. Thomas and handle it from St. Thomas to the yard of the New York Central at Suspension Bridge, without stopping at Montrose. The marshalling of the trains will continue as at present at Windsor, and after the arrival of the through train at Suspension Bridge, N.Y., hereinafter spoken of as Suspension Bridge, and when the necessary Customs requirements have been complied with, the cars for the Lehigh Valley and for the Erie Railway will be delivered by the yard crew stationed at Suspension Bridge. Going west, the through trains will be made up at Suspension Bridge and handled from there to St. Thomas through Montrose without any work being done at Montrose on that particular train, except what is required by Canadian Customs regulations.

The changes proposed relate to solid trains handling American freight from American points to American destinations.

Mr. H. L. Margettes, General Superintendent of the New York Central Railroad Company, with a territory covering from Chicago to Suspension Bridge and Fort Erie, in answer to a question by counsel for the railway summarized as follows:—

“The handling of all cars destined to points in Canada will be moved from connections at Suspension Bridge to Montrose Yard, where the necessary Customs formalities will be taken care of the same as at present. The handling of empty cars of Canadian ownership will be from Suspension Bridge to Montrose Yard by Montrose Yard crews the same as at present. The handling of a large amount of empty equipment belonging to the New York Central Lines to be handled from Suspension Bridge to Montrose Yard by Montrose Yard crews the same as at present, and the necessary operation to switch up by classifications, cleaning, conditioning and repairing of these empty cars will be taken care of by employees at Montrose Yard the same as at present. The handling of business originating in Canada to points in the United States, the return of empty equipment from Canadian points to points in the United States where this equipment is owned will be handled through Montrose Yard, and will be handled from Montrose Yard to connections at Suspension Bridge with Montrose Yard crews.

“Q. So that in that explanation you have covered both the eastbound and the westbound situations?—A. That is correct.

“Q. In what is to continue to be handled at the Montrose Yard?—A. Yes. Those operations will continue to be handled at Montrose Yards.”

The action as proposed stands pending outcome of the hearing.

The application as launched by counsel for the applicants relies upon section 179 of the Railway Act and, also, on section 5 of the Canada Southern Arrangement Act of 1878, 41 Vict., Chapter 27.

The construction of Section 179 has already been before the Board in *Application of the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, et al, on behalf of the Railway Employees for compensation in connection with the abandonment of the Canadian National Railways at Big Valley, Alberta, as a terminal,—Board's Judgments & Orders, Vol. 21, p. 291*; also *Brotherhood of Railroad Trainmen, et al, v. M.C.R.R. Co., 39 Can. Ry. Cas., 239*.

Under section 179, the principle laid down is that the removal of employees, in respect of which the Board has jurisdiction, to the extent therein specified, is a removal in connection with the abandonment of a divisional point or the creation of a new divisional point. The Board, however, as set out in the *Big Valley Case*, may look behind the number of employees retained, and if the number retained is concerned simply with an attempt to evade the provisions of the section the Board may take action.

In the present instance, exhibit 2, filed by counsel for the applicants, shows a present operating staff of 129 and proposed reduction in staff of 77; thus leaving a staff of 52.

Exhibit 15, filed by counsel for the railway company, shows a present operating staff of 117; a decrease of 57 and a proposed operating staff of 60.

Counsel for the applicants in commenting on the difference in the figures said, at p. 2391, the difference between the figure of 60 and the figure of 52 was not of sufficient importance to justify dwelling on it.

The Board has had its Chief Operating Officer make a check of the proposed change in the situation at Montrose. The company's representative at the hearing said four departments would be affected but not eliminated, namely, the transportation, locomotive, car, and building departments. The track force, not included in the evidence given, amounts to 13. There would be a reduction here of 3; so the present staff of 117, plus staff of track men amounting to 13, would give a total of 130; and after deducting from this the staff reduction of 57 and track reduction of 3, there would be a total of 70 still employed.

Representation was made by the railway in regard to the intended continuance of services local to Canada which were handled by the facilities at Montrose, and the bearing of this on the continuance of the local service there was referred to. The following is pertinent: The distance from Montrose Junction—which is the junction of the line from Bridgeburg,—to the following points is as follows: —

Niagara Falls..	2·59 miles
Chippewa..	2·72 “
St. Davids..	7·25 “
Niagara-on-the-Lake..	15·27 “

The summary in exhibit 18 shows that in 1929 there were 72·6 cars handled per month; in 1930, 88·7; and in 1932, up to the end of June, 48·1 cars. These were all loaded cars. No account of empty car movement was included. In addition, the same exhibit shows that local cars received and despatched in June, 1929, averaged 87·14 per day; 1930, 60·5 per day; and 1932, 35·7 per day.

Checking out the bulletin situation, it appears that the assignment switching engine would be as follows:—

For local work:

- 1 crew, 8.00 a.m. to 4.00 p.m.
- 1 crew, 4.00 p.m. to midnight, except Sundays and holidays.

One transfer engine:

- 3 crews, midnight to 8 a.m.
- 8.00 a.m. to 4 p.m.
- 4.00 p.m. to midnight, daily.

This assignment will care for 5 engine crews of 2 men each; a total of 10.

This affords some measure of the traffic local to Canada and handled at and through Montrose.

In the course of Argument, counsel for the applicants at pp. 2431-2432, used the following language:—

“I say that if you discontinue substantially those services, the repair shops incidental to the maintenance at divisional or terminal points, the switching of cars or marshalling or whatever term one uses, if you discontinue those services I submit that in effect you remove the terminal from that point.

“The ASSISTANT CHIEF COMMISSIONER: In section 179, where do you get the words ‘substantially’ or ‘in effect?’

“Mr. LAWSON: I do not.

“The ASSISTANT CHIEF COMMISSIONER: We have got to keep within the four corners of the Railway Act, haven’t we?

“Mr. LAWSON: I quite agree. What I propose to argue is that to remove a division point does not mean that you must lay off every employee, lock up every shop and not use it for any purpose.

“The ASSISTANT CHIEF COMMISSIONER: What section are you referring to in that connection?

“Mr. LAWSON: I am not referring to any section. I know of no section that helps in the interpretation.....”

It was not contended by counsel for the applicants that the statement in regard to the number of employees who would continue at Montrose was a camouflage set-up. It was recognized by him that the decision in the *Big Valley*

Case was strongly against him. He stated that that decision not having been appealed or further reviewed, he could only point out that under section 51 of the Railway Act the Board need not be bound by that decision unless it so desired.

In so far as reliance is placed upon section 179, the application fails.

As pointed out, reliance is also placed upon section 5 of the Canada Southern Arrangement Act of 1878. Section 179 deals specifically with a procedure where terminals are closed or new ones created. The fact that this section gives a specific procedure for a specific set of facts is further emphasized by the fact that the procedure is an invasion of the normal arrangements existing between railway employer and employee. In the absence of statutory notification of modification, the question of employment and the terms and conditions of same is a matter of the domestic economy of the railway.

The Canada Southern Arrangement Act is concerned with the confirmation of an agreement entered into between the Canada Southern Railway Company and Schell and Vanderbilt, who were Trustees under a new bond mortgage entered into. The details of this arrangement are not pertinent to the present matter. What is relied upon by counsel is section 5 of the legislation which reads:—

“The principal departmental and other offices and the workshops of the said company shall be and continue to be in Canada.”

The Canada Southern Railway Company operating under Dominion legislation was subsequently operated by the Michigan Central Railroad Company, and is now under operation by the New York Central. Counsel for applicants contended that section 5 placed an obligation on the Canada Southern Railway Company to continue its workshops in Canada; and he submitted that to make the proposed change meant “in effect” removing a large proportion of these workshops out of Canada to another country and having services performed in such workshops carried on outside of Canada; and he argued that this was a breach of the statute.

Reference was then made to section 33, ss. 1 (a) of the Railway Act which provides that the Board shall have “full power to inquire into, hear and determine any application by or on behalf of any party interested, complaining that any company or person has failed to do any act, matter, or thing required to be done by this Act or the Special Act.....” Counsel further stated that under the section the Board had jurisdiction and the function to restrain any breach of the statute which is in the nature of a Special Act. In this way, the rearrangements proposed affecting Montrose would be restrained from coming into operation.

As indicated, counsel does not claim there is actual removal of workshops; the most he claims is the proposed change is “in effect” removing a large proportion of the workshops, or the services performed therein. I am not satisfied that section 5 of the legislation of 1878, as referred to, has a controlling or modifying effect in respect of the powers and provisions of section 179 of the Railway Act; and the application fails.

July 20, 1932.

Commissioner Stoneman concurred.

ORDER No. 48890

In the matter of the application of the employees of the Michigan Central Railroad Company (the New York Central Railroad Company lessee), at Montrose Yards, in the Township of Stamford, County of Welland and Province of Ontario, the Corporation of the City of Niagara Falls and the Corporation of the Township of Stamford, for an Order restraining the said Railroad Company from any action relative to the distribution of cars which will result in the removal, closing or abandonment of Montrose Yards, and the throwing out of employment the railway men there engaged; and for such further and other relief as the Board may deem meet and proper.

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

File No. 36800.1.

Upon hearing the application at the sittings of the Board held at Niagara Falls on Thursday, the 7th day of July, 1932, in the presence of Counsel for the Applicants and the Railroad Company, the evidence offered and what was alleged—

It is ordered: That the application, be, and it is hereby, dismissed.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 48852

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 9th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 190A of Supplement No. 48 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 190A of Supplement No. 48 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

To	Rates in cents per 100 pounds	
	From Bath, N.B.	From St. John, N.B.
Hamilton, Ontario	36½	—
London, Ontario	39½	39½
Waterloo, Ontario	37½	37½
Montreal, Quebec	29	—

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 48867

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 14th day of July, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement 19 to Tariff C.R.C. No. E-1253 and in Supplement 3 to Tariff C.R.C. No. E-1737, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48881

In the matter of the Order of the Board No. 48685, dated May 28, 1932, apportioning the cost of maintaining three subways—one under the tracks of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian Pacific Railway Company and the Brampton Subdivision of the Canadian National Railways at Bloor Street; one under the tracks of the Canadian National Railways' Newmarket Subdivision on Bloor Street; and one under the tracks of the Canadian Pacific Railway Company and the Canadian National Railways on Royce Avenue, in the City of Toronto and Province of Ontario;

And in the matter of the application of the Canadian National Railways for an Order amending the said Order No. 48685.

Files Nos. 32453 and 32453.6

SATURDAY, the 16th day of July, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

Upon reading what is filed in support of the application, and the consent of the Canadian Pacific Railway Company, filed,—

The Board orders: That the said Order No. 48685, dated May 28, 1932, be, and it is hereby, amended by adding the words, “of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision,” after the word “tracks” in the second line of paragraph 3 of the order; and the words, “the Brampton Subdivision of,” after the word “and” in the said second line of paragraph 3.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER NO. 501

In the matter of the "Standard Regulations of the Board Affecting Highway Crossings, as amended May 4, 1910;" and the General Orders of the Board numbered 40, 451 and 467, dated respectively May 4, 1909, September 21, 1927, and March 12, 1929, made herein:

File No. 30245

TUESDAY, the 19th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., Chief Commissioner.
S. J. McLEAN, Asst. Chief Commissioner.
G. A. STONE, Commissioner.

Upon the report and recommendation of the Chief Engineer and the Chief Operating Officer of the Board,—

It is ordered: That the regulations regarding the future construction of highway crossings are and shall be as follows, namely:—

1. With each application the applicant shall send to the Secretary of the Board three sets of plans and profiles of the crossing or crossings in question—

Scale—		
Plan	400 feet to an inch	
Profile of railway—		
horizontal	400	"
vertical	20	"
Profile of highway—		
horizontal	100	"
vertical	20	"

First set for approval by and filing with the Board. Second and third sets to be furnished to the respective parties concerned, with a certified copy of the order approving of the same.

2. The plan and profile shall show at least one-half mile of the railway each way and 300 feet of the highway on each side of the crossing.

3. The plan shall show all obstructions to the view from any point on the highway within 100 feet of the crossing to any points on the railway within one-half mile of the said crossing.

4. The applicant shall give the municipality in which the proposed crossing lies, or the railway company whose line is proposed to be crossed, notice of the application and copies of the plan, and furnish the Board with proof of service; where it is proposed to cross a railway, service must be made on the solicitor of the railway company at the head office.

5. The road surface of level or elevated approaches, and of cuts made for approaches, to rural railway crossings over highways shall be 20 feet wide.

6. (a) A strong substantial fence, or railing, four feet six inches high with a post cap four inches by four inches, or a top board one and one-half inches by six inches, a middle board the same dimensions as the top board, and a ten inch board nailed firmly to the posts at the surface of the ground to prevent snow from blowing off the approaches, shall be constructed on each side of every approach to a rural railway crossing over a highway, where the height is five feet or more above the level of the adjacent ground—leaving always a clear road surface 20 feet in width. At the request of the party having jurisdiction over the highway, the bottom board may be dispensed with.

(b) Where conditions require, the standard guard fence of the Province in which the crossing is located may be used in lieu of the guard fence provided for in Paragraph (a).

7. Unless otherwise authorized by the Board, planking, steel rails, paving of concrete or asphalt, broken stone topped with crushed rock screenings, or a good coarse gravel, shall be used on rural crossings over highways, between the rails and for a width of at least eight inches on the outer sides thereof; and, whether on a right-angled or a skew crossing, the planking, etc., shall be sufficiently long to provide a width of travelled way of at least 16 feet at the actual crossing of the rails.

8. In cities, towns, and villages, the width of all kinds of approaches to a railway crossing over a highway (street or avenue), and of the planking, etc., between the rails and on the outer sides thereof, must be regulated by the position of the street and the traffic, or the anticipated traffic, thereon, but shall not be less than 20 feet wide.

9. *Cuts and fillings on highway crossings.*—Whenever a cut on the line of railway exceeds 9 feet, or a filling thereon exceeds 7 feet, at a highway or street crossing, the railway company, before proceeding with the work of construction, shall refer the matter to the Board with a full statement of the facts and circumstances, that the Board may decide as to the advisability of ordering a separation of grades at the said crossing.

10. In special cases it may, upon application, be ordered that any existing highway crossing be constructed so as to conform to the foregoing standards and requirements.

11. Where a new line is being constructed, the highway crossings may be shown on the location plan. Where it is proposed to construct highways across a line already built, separate applications must be made for each crossing.

12. Signs shall be painted white with black letters; shall generally be placed not more than 15 feet from the track, with the edge of the sign as close to the travelled portion of the highway as possible; and shall be at right angles to the highway, facing approaching vehicles.

13. On straight level approaches, highway crossing signs shall be not less than five feet, nor more than six feet six inches, above the travelled portion of the highway; the said distance to be measured to the low part of the sign, as shown on the diagram dated 1st September, 1927. Under other conditions, the same may be varied as necessary to give the best possible aspect from approaching vehicles both night and day.

14. Where there are grades and curves on the approaches, the line of sight and illumination shall be the first consideration, and highway crossing signs shall be so placed as to be readily illumined and visible from both sides of the track when users of the highway are a reasonable distance away.

And it is further ordered that the standard of paragraphs 12, 13 and 14 herein be substituted for existing work as and when replacements of crossing signs are necessary.

And it is further ordered that the said General Orders Nos. 40, 451 and 467 be, and they are hereby rescinded.

C. P. FULLERTON,
Chief Commissioner.

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No. 12

Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement 1 to Tariff C.R.C. No. 25, approved herein, are as follows:—

From	Rates in cents per 100 lbs.
Halfway River, N.S.	3½
West Brook, N.S.	3¾
Southampton, N.S.	4
East Southampton, N.S.	4

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48897

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 165 of Supplement 48 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 165 of Supplement 48 to Tariff C.R.C. No. 817, approved herein, are as follows:—

To	Rates in cents per 100 lbs.
Port Williams, N.S.	11
Kentville, N.S.	11½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48898

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement 7 to Tariff C.R.C. No. E-1804, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48899

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 66 of Supplement 14 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 66 of Supplement 14 to Tariff C.R.C. No. 851, is eight cents per one hundred pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48901

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Halifax, Nova Scotia, to Dimock's, Nova Scotia, in item 5-B of Supplement 3 to Tariff C.R.C. No. 864, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 5-B of Supplement 3 to Tariff C.R.C. No. 864, approved herein, is fourteen and one-half cents per hundred pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48902

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 111, 263A and 286A of Supplement 36 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said items 111, 263A and 286A of Supplement 36 to Tariff C.R.C. No. 856, approved herein, are as follows:—

	Rates in cents per 100 lbs.
For Item 111 to	
Windsor, N.S.	5½
Wolfville, N.S.	5½
Port Williams, N.S.	4½
Kentville, N.S.	4½
Berwick, N.S.	5½
Kingston, N.S.	5½
Middleton, N.S.	6½
Bridgetown, N.S.	7
Annapolis, N.S.	7½
For Item 263A from	
Lower Truro, N.S. }	18
South Maitland, N.S. }	
For Item 286A	

The fourth and seventh class rates in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48903

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

SATURDAY, the 23rd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 70 of Supplement 49 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 70 of Supplement No. 49 to Tariff C.R.C. No. 817, approved herein, is eight and one-half cents per hundred pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48904

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published in Supplement No. 20 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act would have been effective in lieu of the said Supplement No. 20 to Tariff C.R.C. No. 811, approved herein, are as follows:—

To	Rates in cents per 100 lbs.	
	Column A	Column B
Middleton, N.S.	10½	11½
Bridgetown, N.S.	11	12
Annapolis, N.S.	12	13
Digby, N.S.	13	14
Weymouth, N.S.	13	14
Meteghan, N.S.	14½	15½
Yarmouth, N.S.	15	16

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48906

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

FRIDAY, the 22nd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement 32 to Tariff C.R.C. No. E-1230, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48905

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

SATURDAY, the 23rd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the toll published in Tariff C.R.C. No. 867, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. 867, approved herein, is forty-three and one-half cents per hundred pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48908

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 252(4) and 275 of the Railway Act, for authority to open for the carriage of traffic a portion of its Hamlin to Shellbrook Branch, Mile 0 to Mile 26·35, and to operate through the connection of the said branch of the tracks of the Canadian National Railways, at Mile 12·09, on the Canadian National Railways' Hamlin-Glenbush Branch, in Section 23, Township 46, Range 15, West 3rd Meridian, Province of Saskatchewan.

File No. 37750.13

SATURDAY, the 23rd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the affidavit of the engineer of construction of the applicant company that, in his opinion, the said portion of railway is sufficiently completed for the safe carriage of traffic and ready for inspection, and upon the report and recommendation of the Division Engineer of the Board, concurred in by its Assistant Chief Engineer,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its Hamlin to Shellbrook Branch, Mile 0 to Mile 26·35, and to operate through the connection of said branch with the tracks of the Canadian National Railways at Mile 12·09, on the Canadian National Railways' Hamlin-Glenbush Branch, in section 23, township 46, range 15, west 3rd meridian, in the province of Saskatchewan.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48907

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 252(4) and 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Medstead Northeasterly Branch, Mile 0 to Mile 35·99, and to operate through the connection of said branch with the tracks of the Canadian National Railways at Mile 56·01, on the Canadian National Railways' Robinhood Subdivision, Province of Saskatchewan.

File No. 30356.42

SATURDAY, the 23rd day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the affidavit of the engineer of construction of the applicant company that, in his opinion, the said portion of railway is sufficiently completed for the safe carriage of traffic and ready for inspection, and upon the

report and recommendation of the Division Engineer of the Board, concurred in by its Assistant Chief Engineer,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its Medstead North-easterly Branch, from mileage 0 to mileage 35·99, and to operate through the connection of said branch with the tracks of the Canadian National Railways, at mileage 56·01, on the Canadian National Railways' Robinhood Subdivision, province of Saskatchewan.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48895

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

MONDAY, the 25th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 65 of Supplement 47 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, which but for the said Act would have been effective in lieu of that published in the said item 65 of Supplement 47 to Tariff C.R.C. No. 817, approved herein, is eleven and one-half cents per hundred pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48900

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

TUESDAY, the 26th day of July, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Port Williams, Nova Scotia, to Truro, Nova Scotia, in item 10A of Supplement 2 to Tariff C.R.C. No. 864, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 10A of Supplement 2 to Tariff C.R.C. No. 864, approved herein, is twenty-two cents per one hundred pounds.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF MAY, 1932

Railway accidents	151	with 27 persons killed and 133 injured
Railway accidents at highway crossings	17	with 4 persons killed and 21 injured
	168	31
		154

	Killed	Injured
Passengers	1	16
Employees	6	86
Others	24	52
	31	154

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NEW BRUNSWICK

- 3 Automobile—N.B. licences CF-296, J-4350, F-3614.

QUEBEC

- 1 Horse-drawn vehicle—Attempted to drive over crossing ahead of train.
1 Pedestrian—Passed under gates in lowered position.

ONTARIO

- 2 Automobile—Auto ran into side of train. Ontario licences KB-139, FO-328.
1 Automobile—Auto driver inattentive approaching crossing. Ont. licence P-2869.
1 Automobile—Auto with defective brakes. Ont. licence LW-65.
1 Automobile—Ont. licence AA-413.
1 Auto truck—Truck ran into side of train. Ont. licence 41298-C.
1 Horse-drawn vehicle.
2 Pedestrian.

ALBERTA

- 1 Automobile—Auto ran into side of train. Alta. licence 8-834.
1 Automobile—Alta. licence 39-229.

BRITISH COLUMBIA

- 1 Automobile—B.C. licence 9-189.

Of the 17 accidents at highway crossings, 14 occurred at unprotected crossings and 3 at protected crossings. Eleven (11) of the accidents occurred during the daylight hours and six (6) at night.

OTTAWA, July 29, 1932.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, September 1, 1932

No. 13

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Application of Canadian Sugar Factories, Limited, Raymond, Alta., and the Alberta Co-operative Beet Growers' Association for an order of the Board directing the Canadian Pacific Railway: (1) To make a reduction in the current rates on sugar beets from various points in Alberta to Raymond. (2) To reduce the rates on wet sugar beet pulp from Raymond to various points in Alberta. (3) To make an allowance of four per cent in the weight of the lading to offset the weight of dirt loaded in cars with sugar beets.

File 34141.

JUDGMENT

BY THE BOARD.

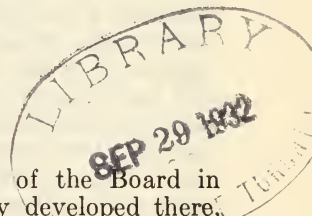
1

This application was set down for hearing at sittings of the Board in Calgary on June 18, 1932, on short notice. It was partially developed there, and subsequently the parties completed their case by the filing of written submissions; that of the applicants in reply to the answer of the railway being dated August 16th.

2

RATES ON SUGAR BEETS

The Canadian Sugar Factories allege that the present rates are "excessive and crippling in their effect upon the industry;" that they are excessive as compared with rates on sugar beets in the United States; that they are excessive as compared with the rates on other farm products; that there should be a reduction in rates to correspond with the decreased value of the commodity as compared with the years 1921 and 1925.



The following tabulation shows the present scale of mileage rates on sugar beets applicable between points in Eastern Canada; from points in Alberta to Raymond; and the rates requested by the applicant:—

RATES IN CENTS PER TON OF 2,000 POUNDS

Miles	Present Scale of Mileage Rates in Eastern Canada	Present Specific Rates to Raymond, Alta.	Requested Scale of Mileage Rates to Raymond, Alta.
Up to 5.....	90	50	50
Not exceeding 10.....	90	50	50
“ 12.....	90	50	50
“ 15.....	90	60	50
“ 20.....	90	70	60
“ 25.....	90	90	60
“ 30.....	100	100	70
“ 35.....	100	100	70
“ 40.....	100	100	70
“ 45.....	100	100	70
“ 50.....	110	110	80
“ 55.....	110	110	80
“ 60.....	110	110	80
“ 65.....	120	120	90

It will be noted that on hauls not exceeding 20 miles, the rates are lower into Raymond than for corresponding hauls between points in Eastern Canada; beyond that distance they are the same. These lower rates were not directed by the Board, but were voluntarily established by the Canadian Pacific Railway in 1925 to assist in the development of this Alberta industry. The railway points out that the rates that would apply, being those now published, were known to the industry and other interested parties before the factory at Raymond was constructed. The sugar factories state it was thought in 1925 that sufficient beets might be procured within a twenty mile radius to operate the plant, but it has been found that sufficient cannot be secured within this area and the bulk of the beets are hauled 45 miles or over by rail. Speaking generally, (there are exceptions) rates are slightly higher in Western Canada than in Eastern Canada, the reasons for which have been reviewed by the Board in numerous judgments and will not be here enlarged upon. Applicants stated that the Eastern Canadian rates are extremely high, but did not furnish supporting evidence of proof. It is sufficient here to say that the reasonableness of the rates in Eastern Canada has been fully considered by the Board on two occasions. First, upon an application made by the Dominion Sugar Company, Chatham, Ont., in 1920; and on October 25th of that year the Board issued Judgment (Volume 11, Board's Judgments and Orders, page 289) and by Order No. 31709 of the same date prescribed a scale of mileage rates which the carriers were directed to publish in lieu of the rates then in force, the majority of which were higher. Second, as a part of the General Freight Rates Investigation, the same applicant applied for a reduction in the rates established pursuant to Order No. 31709; and the application was dismissed for the reasons set out in the report of the Chief Traffic Officer, whose conclusions were concurred in by the Board (Volume 17, Board's Judgments and Orders, page 375). Following the establishment of the reduced rates into Raymond for hauls up to 20 miles, the Dominion Sugar Company made complaint to the Board alleging discrimination in favour of Raymond. This was dismissed by Order No. 40121, dated December 31st, 1927, the Board finding that unjust discrimination was not proven for the reasons set out in its Judgment (Volume 17, Board's Judgments and Orders, page 561). It is significant that in this Judgment it was stated that if unjust discrimination was found to exist, it should be removed by

increasing the rates into Raymond rather than by directing a reduction in the rates in Eastern Canada, which had been under review in the two cases already cited above.

The sugar factories state that the rates established in 1925 were based on a carload minimum weight of 50,000 pounds, whereas, in actual practice, beets are being loaded to an average of over 100,000 pounds per car, contending, therefore, that the traffic is being handled with half the cars and at much lower cost than contemplated under the rates published and state they would have no objection to an increase in the carload minimum weight if accorded a reduction in rates. They also refer to beets being brought to the factory in trainload lots and expedition in unloading. The railway company replies to the foregoing as follows:—

"The statement has been made that when the rates were first established in 1925, they were based on a minimum weight of 50,000 pounds per car, whereas in actual practice the cars are being loaded to an average weight of over 100,000 pounds. This statement is not correct. In our negotiations with the Utah-Idaho Sugar Company, the original company interested in the establishment of the plant, we endeavoured to make the minimum weight 80,000 pounds per car. Finally, however, the minimum in the tariff was specified at 50,000 pounds on the understanding that the cars would be loaded on an average to their marked loading carrying capacity, excepting possibly at the "tail-end" of the shipping season some of the cars would not be as heavily loaded, which privilege was of considerable benefit to the Sugar Company at the time, as it avoided delays in deliveries. To further assist the growers, a minimum of 40,000 pounds actual weight if greater, has been granted on shipments consisting of "clean-up" lots, without any advance in rates.

During the last three or four years, for the convenience of the Sugar Company in particular, our largest type of hopper bottom steel coal cars have been allotted to this temporary movement. Necessarily, the removal of such equipment from the coal service, for which service they are intended, caused considerable inconvenience to the coal shippers, the latter being forced in many cases to use box cars; furthermore, our empty car mileage on box cars has increased owing to the smaller carrying capacity. The applicants in their submission state that the beets are brought to the factory in trainloads and unloaded at the average rate of 60 cars per day. The movement is not in trainloads. The cars are not all loaded at one station, but are picked up at the many loading stations as available, and during the first part of the shipping season are handled on the regular trains. As the movement increases, extra trains are put into service. Last year beets commenced to move on the 18th of September and during the following week were handled by the wayfreight, after which two switch crews were put on to pick up loaded cars at the various shipping stations for handling to Raymond, placing cars on the trestle at the plant and removing the empties. The plant is given two or three switches per day as required, and the usual time occupied in placing cars on the unloading trestle is from one to two hours per switch. It has at times been necessary for one of our train crews to remain at the factory from 12 to 16 hours per day placing cars on the unloading trestles which other trains had set out. This special switching service involves considerable terminal expense and, considering the low gross freight earnings under the existing rates, leaves very little for the road haul service."

We have also given consideration to what is stated by applicants in relation to the foregoing in their final submission.

It is stated by the sugar factories that the producing districts are now being largely served by gravel roads and the development of trucking beets is increasing. The 1931 crop amounted to 105,272 tons, of which 85,749 were brought by rail. They state unless the railway is willing to lower its rates, within the next few years trucking will absorb a large portion of the haul. This is a question distinct from the reasonableness of the rail rates per se, and is more a matter for the railway than for the Board to settle. The position of the Board with respect to rates published to meet competition has been stated and reiterated in many of its judgments. The railway may reduce its rates to meet competition, but the Board does not direct them as a matter of compulsion.

Comparison was made with sugar beet rates within the United States by showing a Montana scale, a Utah-Idaho scale, and a scale published by the Northern Pacific Railway in Minnesota. These show lower rates within the United States territory referred to, but the record is devoid of any evidence concerning the transportation circumstances and conditions incident to the rates in question, and where there is no showing whatever, either as to the movement of traffic under certain rates, or as to similarity of traffic or transportation conditions, such rates are of no value for purposes of comparison. The sugar produced at Raymond is not sold in competition with sugar produced in the United States, so that in this sense there is absolutely no relationship between the movements compared. Upon analyzing the United States scales referred to, it is noted that for the shorter distances the rates of the Utah-Idaho scale are appreciably lower than under the Montana scale, while for hauls over 45 miles the reverse is the situation. This appears to be an inconsistent and discriminatory condition, but may be justified in the light of the existing circumstances, of which we have no knowledge. Applicants state in their last submission that they understand the Montana rates are the highest short haul rates on beets in the United States. Evidently they are unaware of the scale prescribed by the Interstate Commerce Commission for application in the states of Ohio and Michigan (91 I.C.C., 677). The rates directed by the Interstate Commerce Commission in this case are uniformly higher than the Montana scale, and for some of the hauls, higher than the present rates into Raymond. Regarding these comparisons, what is stated by the Board in other cases is pertinent. In *Riley vs. the Dominion Express Company*, 17 C.R.C., 112, p. 115, it was said:—

“Rates as arrived at in the United States are not the criteria of reasonable rates in Canada unless the circumstances in both cases are on all fours.”

In re Telegraph Tolls, 20 C.R.C., 1, at p. 6, it was said:—

“Comparisons between rates in the United States and those in Canada are informative, but not conclusive. They have no necessary conclusive bearing on the reasonableness of rates in Canada.”

In the application of the Consumers Glass Company, Montreal, Volume 17, Board's Judgments and Orders, page 732, it is stated:—

“In the submissions placed before the Board from time to time it has been contended that American rates shall be the criteria of reasonableness where such rates are lower than Canadian rates. In *Manitoba Dairymen's Association vs. the Dominion and Canadian Northern Express Companies*, 14 C.R.C., at p. 149, the following language was used:—‘As I construe the Railway Act, the Board must find its criteria of the reasonableness of Canadian rates within Canada.’”

With respect to the contention that rates were fixed in 1921 and 1925 when the commodity had a much greater value than at present and there should be a reduction in rates to correspond with the decreased value of the commodity,

it may be pointed out that a similar contention has been before us in other cases and the Board's position on this point can be summarized by the following citation from its Judgment in the General Freight Rates Investigation in connection with the submission of the National Dairy Council of Canada for a reduction in the rates on butter and cheese (Volume 17, Board's Judgments and Orders, page 399):—

"Freight rates fixed to bear a relationship to the fluctuations in the price of commodities would have no permanency, nor would they necessarily have any relation to the cost of service, or other factors that are controlling in the establishment of rates, and this has never been accepted as a valid or proper principle of rate-making. The following excerpt from the Board's judgment in the complaint of the National Dairy Council of Canada on behalf of the Manufacturers' section of the Alberta Dairy-mens' Association *re* freight rates on butter east and west of Calgary and Edmonton (Vol. XII, Board's Judgments, Orders, Regulations and Rulings, p. 146) is particularly relevant on this point:—

'The application was, in substance, the contention that because the selling price of butter had gone down since the rates were increased the rates should be accordingly reduced.

The principle of charging what the traffic will bear is one of the factors which has been recognized in connection with rate regulation. At the same time, it has not been accepted as the only factor. If a reduction in the price of a commodity is to automatically bring with it a reduction in the rate, it would logically follow that an increase in the price of a commodity would automatically carry with it an increase in the rate. This principle has not been accepted by the Board as valid. The mere ability of an article to pay, aside from the question of whether the increase in revenue to be derived from the increased rate is justifiably necessary, is not a conclusive justification for an increase in rate. In the increase in rates which Canada has had to face, the increase in rates was not made at the same time as prices went up. A considerable period of time elapsed before the rates were increased, and the justification for the increase was the increased cost to which the railways were subjected.'

Giving force to such contention would involve a reduction in practically all the present freight rates, as what commodity has not suffered a decrease in value under the economic disturbance of the last three years. The situation in which the railway companies find themselves as a result of the same condition is well known. Aside from every other consideration, such a principle of rate making would be impracticable, as the prices of some commodities fluctuate daily. Moreover, the data put on record by the sugar factories does not seem to support their contention. Exhibit 4 shows the average price per ton for sugar beets for the whole of Canada for the years 1918 to 1929. The average price per ton in 1921 is shown as \$9.90, declining to \$5.78 in 1924 and standing at \$7.27 in 1925 and \$8.84 in 1929. What is here involved, however, is the price in the province of Alberta and Exhibit 2 shows "net paid farmers" per ton, as follows:—

Year	Net Paid Farmers
1925	\$5 90
1926	7 72
1927	8 16
1928	7 00
1929	7 00
1930	6 52
1931	6 30

It will be observed that in every year since 1925, when the present rates were established, the price has exceeded that of 1925.

All that was submitted in support of the statement that the rates on sugar beets are excessive as compared with the rates on other farm products is contained in Exhibit No. 6, which is a calculation of the return to the railway per acre on beets grown in Alberta as compared with wheat, and a comparison between the charge for hauling a car of wheat and a car of sugar beets. There is little value to a comparison between hauling a car of grain moving under a statutory rate for 1,200 miles and a car of beets moving approximately 50 miles, or to a comparison of return to the railway per acre. The grain rates for hauls corresponding to the beet movement are shown herein.

With regard to the reasonableness of the present scale of rates on sugar beets in Alberta, there is shown below a comparison with the mileage scales on other commodities in the same territory, several of them being very low grade articles:—

CARLOAD RATES IN CENTS PER 100 POUNDS

Distances — Miles	Sugar Beets	Stone, Rubble, Cobble, Field or Waste	Gravel, Sand (Build- ing)	Brick	Grain	Scrap Iron and Steel	Pota- toes	Beets, Cabbages, Carrots, Cauli- flowers, Onions, Parsnips and Turnips	Hay and Straw	Coal
5.....	2½	3½	3	4½	5	3	5	5½	5	4
10.....	2½	5	4	5½	6	4	5½	6	5	4½
12.....	2½	5	4	5½	6½	4½	7½	8	6	5
15.....	3	5	4	5½	6½	4½	7½	8	6	5
20.....	3½	5	4	5½	8	4½	8½	9	8	5
25.....	4½	5	4	5½	9	5½	10	11	8	5½
30.....	5	6	5	7	9	5½	10½	11½	9	5½
35.....	5	6	5	7	9½	5½	11½	12	9	5½
40.....	5	6	5	7	9½	7	12	12½	9	6
45.....	5	6½	5½	7½	11	7	13	14	9	6
50.....	5½	6½	5½	7½	11	7½	13½	14½	11	7
55.....	5½	7	6	8	11½	7½	14	15	11	7
60.....	5½	7	6	8	12	8	14	15	11	7½
65.....	6	7	6	8	12	8	14	15	12	7½
70.....	6	7	6	8	12½	8	14	15	12	7½
75.....	6	8	6½	8½	12½	9½	14½	15½	14	8

Except in the case of sand and gravel, where the beet scale is the same in some instances and in others lower, the beet scale is lower than applicable on all the other commodities enumerated, the rates on which, in some cases, have been prescribed by us, particularly the coal scale. The rates on grain, potatoes, vegetables, and hay and straw are shown because it was contended that the rates on sugar beets were excessive as compared with other farm products, which is not borne out by a comparison of the rates. The Eastern Canadian sugar beet scale was prescribed by us, has been subsequently twice reviewed and is considered reasonable. The rates in Alberta are the same except for hauls not exceeding 20 miles, where they are lower, as already referred to herein. There has been nothing developed on this record to warrant our finding that a reduction should be directed in the current rates on sugar beets in Alberta. It is not evident, and certainly not proven, that these rates are "crippling in their effect upon the industry" as alleged. On this point, the railway submitted the following memorandum showing results of the beet sugar crop at the Raymond factory for the years 1925 to 1931 inclusive:—

MEMORANDUM SHOWING RESULTS OF BEET SUGAR CROP FOR THE YEARS 1925 TO 1931 INCLUSIVE

	1925	1926	1927	1928	1929	1930	1931
Beets originally planted Acres	6,068	6,400	6,500	7,159	9,600	14,545	12,588
Beets actually harvested..... "	5,841	5,103	4,390	5,300	8,500	13,610	11,955
Beets received by rail. Tons	(X)	25,255	25,717	31,300	53,019	104,608	85,748
Beets received by wagon..... "	(X)	11,905	8,000	6,300	8,891	22,500	19,525
Total..... "	41,500	37,160	33,717 ⁽²⁾	37,600	61,910	127,108	105,273
Less loss of beets by frost..... "						14,000	
Total beets manufactured..... "	41,500	37,160	33,717	37,600	61,910	113,108	105,273
Beet yield per acre..... "	7.1	7.5	8	7	7.3	9.04	8.8
Sugar content of beets.. P.c.	14.41	16.49	17.87	17.33	18.19	15.98	18.3
Output of sugar...100-lb. bags	75,500 ⁽¹⁾	98,000	99,350	102,000	176,253	261,875	310,415
Output of molasses..... Tons	(X)	(X)	(X)	1,800	2,947	5,186	4,523
One ton of beets produced (sugar).....Pounds	182	(X)	294	271	284	231	295

(X) Figures not available. (1) Includes 1925 remelt.
 (2) Estimated tonnage beets left in ground — 11,000 tons.

The railway asserts that the above figures substantiate their statement that the operation of the Raymond factory has made steady progress since its commencement in 1925 and states that plant improvements are now under way and additional machinery is being installed.

The Alberta Co-operative Beet Growers' Association support this application. One of their interests in the matter appears to relate to the sugar beet contract.

It is stated that when, in 1925, the railway would not grant rates equivalent to those in Western United States territory, an agreement was reached between the sugar company and the beet growers through their association, under which the grower would assume a freight absorption of 25 cents per ton on all beets delivered to the factory either by railroad, wagon or otherwise; that in addition to the general absorption of 25 cents, the growers, in districts where the rate was over \$1 per ton, agreed to absorb the excess above \$1. The association's submission emphasizes the improvements that have been made in the Raymond district since the sugar factory established there in 1925. It says that since 1925 the assessed valuation of buildings has approximately doubled; the population has increased by 40 per cent in the town of Raymond and there has been a similar increase in the surrounding rural district. It further states:—

"The farmers have made better homes for their families and they are improving the farm buildings, etc., all the time, making it a more desirable place to live. Settlement has doubled in the district east and in the Lethbridge northern irrigation district, settlement has increased 75 per cent."

It shows that the purchasers of land from the Canadian Pacific Railway under the terms of a special beet growing contract, have, in almost every case, made substantial annual payments thereon and quotes a letter from the Manager of the Department of Natural Resources of the Canadian Pacific Railway, in which the following statement is made:—

"You can draw your own conclusions as to a proper comparison of the success of those farmers who have been growing sugar beets as compared with those who have devoted themselves to grain and other crops. As you are no doubt aware, a very low percentage of purchasers who are

growing grain or other crops have been able to meet their land payments during the past two years."

Reference is also made to a large increase in dairy cattle, etc.

Upon careful consideration of the record in this case, we consider the present rates on sugar beets from Alberta points to Raymond are reasonable and the application for an order directing a reduction therein should be refused.

3

RATES ON WET SUGAR BEET PULP

The following tabulation shows the present scale of mileage rates on wet sugar beet pulp between points in Eastern Canada; from Raymond to points in Alberta; rates requested by the applicant from Raymond:—

RATES IN CENTS PER TON OF 2,000 POUNDS

Miles	Present Scale of Mileage Rates in Eastern Canada	Present Specific Rates from Raymond, Alta.	Requested Scale of Mileage Rates from Raymond, Alta.
Up to 5.....	100	100	40
Not exceeding 10.....	100	100	40
" 12.....	100	100	40
" 15.....	100	100	40
" 20.....	100	100	50
" 25.....	100	100	50
" 30.....	100	100	50
" 35.....	100	100	50
" 40.....	100	100	50
" 45.....	100	100	60
" 50.....	110	110	60
" 55.....	110	110	60
" 60.....	110	110	60
" 65.....	140	140	60

Applicant states wet beet pulp as sold in Alberta and which is for use as feed for cattle and sheep, contains from 85 per cent to 90 per cent water; that it has been the aim of the sugar company to return this feed in a wet state at a nominal cost to farmers who produce the beets, the price per ton ranging from 50 to 75 cents; further stating:—

"Farmers throughout the beet growing area have each year hauled away large quantities of pulp by team or truck and the demand exceeded the supply every year until 1931. Since that time with the increased beet production in the districts away from the factory, the beet farmers situated beyond wagon haul distance are pressing that beet pulp be made available in their own districts. This is only feasible if the Railroad Company will haul this cheap feed at a low rate."

Applicant filed a statement of rates applying on this commodity in the states of Utah, Montana, Wyoming, Colorado and Minnesota, and which are lower than the current rates in Alberta, but higher, in many cases, than the rates here applied for. We have no knowledge concerning these rates, with respect to which it is noted that there is considerable variation in them and no uniformity as between different territories and on different railways in the United States, and

they are of no assistance to us in the determination of the reasonableness of the rates applying in Alberta for the reasons set out in Section 2 hereof concerning similar comparisons of rates on sugar beets.

The railway company contends that applicant has not shown that the existing rates are unreasonable, or discriminatory; further stating:—

"The existing freight rates on sugar beet pulp is not the reason for the small consumption at points beyond a certain radius of the factory. Our investigation reveals that the majority of the farmers are feeding their own grain to livestock in preference to purchasing beet pulp or other kinds of fodder, and effecting a saving owing to the low price obtainable for this feed grain. An advance in the grain market prices may change this situation. If it is more advantageous to the farmer to sell his grain and buy beet pulp for livestock feed, the present freight rates will not hinder the movement.

The rates on beet pulp from Raymond, Alberta, are exactly the same as those applicable between points in Ontario. We understand that in Ontario the sugar factories ship the pulp in dry form, paying the grain products rates on the tonnage shipped in this manner. It is our suggestion that if the Canadian Sugar Factories, Limited, are not prepared to assume the transportation cost on the weight of the water content, said to be approximately 90%, the solution to their difficulty in disposing of this so-called "Refuse" is in their own hands, as they can adopt the practice followed by the Ontario shipper."

Applicants state in their last submission that the suggestion made by the railway that the factory should establish a pulp drier has been considered many times, but there exists in the west no such market for dried beet pulp as in the Eastern parts of Canada.

We have not been furnished with any details concerning movement of this traffic, such as the volume of movement, the distance hauled, or average weight loaded per car. There was a rather general reference made at the Calgary hearing by Counsel for the railway, that from a hastily prepared statement some 12 or 13 cars were shipped for the period of eight months commencing in August 1930, and in the corresponding period for the previous year, or following year, there was one car shipped.

The Board has in no case, on any commodity, directed rates as low as applied for and we are clearly of the opinion that they would be unremunerative to the railway. As stated by the Board in re gravel for road making purposes in Western Ontario, Volume 5, Board's Judgments and Orders, page 116:—

"The Board cannot order the companies to put in unremunerative rates, nor a rate so low as to be unfairly out of line with rates which are necessary to be maintained in order to permit the continuance of satisfactory operation of railways, due regard being had to proper consideration of the value of the commodities shipped and the service performed."

The present rates on wet beet pulp compare favourably with, and are in some cases lower than, the rates applying in the same territory on such low grade articles as gravel, sand and stone as shown in the tabulation of rates in Section 2 hereof. We do not consider the present record affords any basis for finding the present rates unreasonable and the application should be refused.

ALLOWANCE OF FOUR PER CENT FROM THE WEIGHT OF THE LADING TO OFFSET THE
WEIGHT OF DIRT LOADED IN CARS WITH SUGAR BEETS

Applicants state that, as loaded in cars, sugar beets carry from four per cent to eight per cent of dirt and request a four per cent deduction from the gross weight of beets as a dirt tare, stating that the United States carriers provide for such an allowance. According to a statement filed by applicants, the percentage of dirt varies considerably from year to year, being as low as 2.89 in 1928 and as high as 7.65 in 1930. No explanation was given for such variation. We have no knowledge concerning the practice of United States lines and reason for it and whether the same allowance is made on other root crops. The submission of the railway company is as follows:—

“The request for an allowance of 4 per cent for dirt tare is an unusual one. It is not the practice of the Canadian railways to grant an allowance for weight of dirt that might be attached to vegetables loaded in cars in bulk such as potatoes and turnips, and there is no good reason why an exception should be made to their policy in this respect in the case of sugar beets. If the shippers or consignees are not prepared to pay for the weight of the dirt that is tendered to the railway for transportation in addition to the actual weight of the beets, they should undertake to remove the dirt from the beets before loading into car.

“The railways are entitled to assess tolls on the gross weight of the article as tendered to them for transportation, whether the commodity is shipped in bulk or in packages. If in the latter form, the weight of the container is in addition to the weight of the commodity, and it follows that the weight of the dirt adhering to the sugar beets should be charged for.”

The only allowances from track scale weights that have been prescribed by the Board are those set out in General Order No. 283, dated February 24, 1920, which relate to racks on flat or gondola cars loaded with bark; for blockage, dunnage or temporary racks in connection with carload shipments of agricultural machinery, stoves, etc. These are protectives additional to the usual crating or boxing of the articles and to enable, in some instances, loading the car to the required carload minimum weight. There has never been an allowance, or deduction, from the weight of the lading by the railways in Canada of the character here sought, and throughout Canada freight charges are assessed on the entire weight of the lading, not only on shipments in bulk, but also on articles shipped in packages. The boxing of a commodity may increase its weight 20 per cent and the freight charges are based on the gross weight of the package and at the rate applicable to the commodity shipped therein. There is the further fact here that the rates on sugar beets are no higher, and in quite a number of cases lower, than the rates applying on dirt, or, in other words, the rates on sand and gravel, as shown under tabulation in section 2 hereof.

We do not consider applicant has made out a case justifying a direction to make the allowance applied for, which would be an exception to the general practice prevailing throughout Canada and the establishment of a precedent which might be far reaching in its effect.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, ONT., August 27, 1932.

ORDER No. 48980

In the matter of the application of the Canadian Sugar Factories, Limited, of Raymond, Alberta, and the Alberta Co-operative Beet Growers' Association for an Order directing the Canadian Pacific Railway Company (1) to make a reduction in the current rates on sugar beets from various points in Alberta to Raymond; (2) to reduce the rates on wet sugar beet pulp from Raymond to various points in Alberta; and (3) to make an allowance of four per cent in the weight of the lading to offset the weight of dirt loaded in cars with sugar beets.

File No. 34141.

FRIDAY, the 26th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, June 18, 1932, in the presence of Counsel for and representatives of the Applicants and the Railway Company, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board—

It is ordered that the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48938

In the matter of the application of the Lakeside Milling Company, Limited, of Toronto, Ontario, for an Order extending further the date within which it may apply to the Board for leave to appeal to the Supreme Court of Canada from Order No. 48728, dated June 10, 1932, dismissing the complaint of the said Lakeside Milling Company, Limited, against tariffs of the Canadian Pacific and the Canadian National Railway Companies publishing competitive rates on sack grain and grain products from the head of the lakes and certain bay ports to specific eastern Canadian destinations.

File No. 38316

MONDAY, the 8th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon reading the submissions filed in support of the application,—

It is ordered: That the time for making application to the Board for said leave to appeal be, and it is hereby, further extended until the 1st day of September, 1932.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48944

In the matter of the application of the New York Central Railroad Company and the St. Lawrence and Adirondack Railway Company, hereinafter called the "Applicant Companies," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of their line of railway from mileage 26.44 to 29.19.

File No. 37131

FRIDAY, the 12th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant companies be, and they are hereby, authorized, to open for the carriage of traffic that portion of their line of railway from mileage 26.44 to 29.19.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48954

In the matter of the application of the International Railway Company, hereinafter called the "Applicant Company," for approval of Tariff C.R.C. No. 3, covering tolls to be charged in respect of the Falls View Bridge and the Queenston-Lewiston Bridge over Niagara Falls, on file with the Board under file No. 36795.7.

FRIDAY, the 12th day of August, A D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Tariff C.R.C. No. 3 of the applicant company, covering tolls to be charged in respect of the Falls View Bridge and the Queenston-Lewiston Bridge, on file with the Board under file No. 36795.7, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48957

In the matter of the application of the Gebo Coal Company, Limited, under Section 277 of the Railway Act, for an Order authorizing the Canadian National Railways to open for the carriage of traffic the branch line of railway constructed for the said Gebo Coal Company, Limited, between the Northwest Quarter of Section 13 and the Southeast Quarter of Section 28, Township 47, Range 24, West 4th Meridian.

File No. 31531.1.1

MONDAY, the 15th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, and the consent of the Canadian National Railways, filed,—
It is ordered:

1. That the Canadian National Railways be, and they are hereby, authorized to open for the carriage of traffic the said branch line of railway constructed for the Gebo Coal Company, Limited, between the northwest quarter of section 13 and the southeast quarter of section 28, township 47, range 24, west 4th meridian, in the province of Alberta, for a period of sixty days from the date of this order: Provided such operation be performed by light engine, and that the rate of speed be limited to fifteen miles an hour.

2. That the making of this order shall not in any way affect the due performance of all of the conditions specified in the orders of the Board numbered 42530 and 47533, dated respectively April 29, 1929, and October 13, 1931.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48958

In the matter of the application of the Express Traffic Association of Canada, under Sections 322 and 360 of the Railway Act, for approval of proposed Supplement "A" to Express Classification for Canada No. 8, on file with the Board under file No. 4397.111.1.

MONDAY, the 15th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: that the said proposed Supplement "A" to Express Classification for Canada No. 8, on file with the Board under file No. 4397.111.1, be, and it is hereby, approved; the said supplement to be published as Supplement No. 1 to Express Classification for Canada No. 8.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48966

In the matter of the application of G. C. Ransom, on behalf of railway companies in Eastern Canada, for permission to withdraw, upon one day's notice, the reduced rates on pulpwood from stations in Canada to points in the United States, published to become effective August 22, 1932.

File No. 27612.64

FRIDAY, the 19th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon its appearing that protests against the proposed reduction in rates have been filed by the New England Freight Association and others with the Interstate Commerce Commission, which has authorized cancellation thereof upon one day's notice, by its Permission No. 117315,—

The Board orders: That railway companies publishing reduced rates on pulpwood to points in the United States to become effective August 22, 1932, in the following schedules, namely:—

Canadian National Railways, Sup. 14 to Tariff C.R.C. E-1697;

Canadian Pacific Railway, Sup. 17 to Tariff C.R.C. E-4258;

Canadian Pacific Railway, Sup. 8 to Tariff C.R.C. E-4440;

Quebec Central Railway, Sup. 2 to Tariff C.R.C. 1035;

Temiscouata Railway, Sup. 2 to Tariff C.R.C. 661,

be, and they are hereby, permitted to cancel the same upon one day's notice to the Board; a reference to this order to appear on the title page of the cancellation supplements.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 502

In the matter of Section 274 of the Railway Act and General Order of the Board No. 40, dated May 4, 1909; and in the matter of the applications of the Canadian Pacific Railway Company and the Canadian National Railways for relief from erecting and maintaining cattle guards and wing fences at various points on their respective railways.

File No. 455.363

MONDAY, the 8th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon reading what is alleged in support of the applications, the reports of its Chief Operating Officer and Chief Engineer, and its appearing to the Board that cattle guards are unnecessary in cities and towns,—

It is ordered that all railway companies subject to the jurisdiction of the Board be, and they are hereby, relieved from erecting and maintaining cattle guards at highway crossings in cities and towns.

C. P. FULLERTON,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, September 15, 1932

No. 14

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Application of G. C. Ransom, on behalf of the railways subject to the jurisdiction of this Board, for permission to cancel, upon five days' notice, tariffs which have been published to meet motor truck and water competition when such competitive tariffs fail to move traffic by rail.

File No. 27612.65

JUDGMENT

BY THE BOARD:

The extreme activity of unregulated motor truck and water carriers has forced the railways to greatly reduce their rates in an endeavour to hold the traffic; usually upon the promise of shippers to forward by rail.

Often, subsequent negotiations with the unregulated carriers result in a further reduction in rates, and shippers fail to fulfil their promises. In such cases, the railways must, under the Act, continue in effect the reduced rates for a period of thirty days, which rates may be used by the delinquent shipper if there is a failure in the services of the unregulated carriers, or by others who do not ordinarily ship by truck or water, with a resultant loss of revenue to the railway.

The railways desire authority, in such cases, to cancel the reduced rates on five days' notice, which would have the effect of restoring the higher normal rate. The Railway Act requires thirty days' notice for an advance in freight rates.

Under authority of section 325, subsection 2, the Board has power to designate the date upon which any tariff shall come into force, but this authority has, in the past, been exercised sparingly, and only in cases where the Board was convinced of the necessity of such action, each case being considered upon its merits.

The provisions of the Railway Act as to notice are designed to give stability to the rate structure, and are widely known. Any shortening thereof might easily cause loss to shippers.

While fully recognizing the extreme financial difficulties of the railways and the severity of motor truck and water competition, the Board does not feel justified in delegating to the railways discretionary powers as to the application of a plain provision of the Railway Act in connection with any particular traffic, and the application must be refused.

The Board, however, is prepared to consider, upon its merits, any individual application for cancellation of these competitive tariffs upon less than statutory notice, and suggests that railways, upon publishing reduced rates to meet motor truck or water competition, file with the Board full details as to the necessity for such action, such as rates in effect via motor truck or water; names of shippers; agreement (if any) as to shipment by rail; expected volume of traffic, whether in carloads or less than carloads, etc. With this information and further details as to the necessity for cancellation, the Board will be in a position to promptly deal with the application.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, August 29, 1932.

ORDER No. 48984

In the matter of tariffs, and supplements to tariffs, published under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 20th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 874, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 874, approved herein, are those published in the Dominion Atlantic Railway Company's Tariff C.R.C. No. 750, except from the following points, the normal tolls for which are as follows:—

From	Rates in cents per 100 pounds	
	Less than carloads	Carloads
Truro, N.S.	31	22½
Lower Truro, N.S.	38	26
Billtown to Grafton, N.S.	36	28
Somerset to Weston, N.S.	38	29½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48985

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

SATURDAY, the 20th day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published on live stock, in carloads, in Tariff C.R.C. No. 690, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 690, approved herein, are as follows:—

From	To Rivière du Loup, Que., Edmundston, N.B. Rates in cents per 100 pounds	
St. Jacques Church, N.B.	17½	10
St. Rose, Que.	17½	12½
Notre Dame du Lac, Que.	17½	12½
Cabano, Que.	14½	15
St. Louis du Ha Ha, Que.	14½	15
Vauban, Que.	14½	16
St. Honore, Que.	12½	17½
Couturier, Que.	12½	18½
Whitworth, Que.	11½	20
St. Modeste, Que.	10	20

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48986

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 22nd day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

- Supplement 6 to Tariff C.R.C. No. E-1227.
- Supplement 23 to Tariff C.R.C. No. E-1230.
- Supplement 58 to Tariff C.R.C. No. E-1235.
- Supplement 46 to Tariff C.R.C. No. E-1240.
- Supplement 13 to Tariff C.R.C. No. E-1251.
- Supplement 20 to Tariff C.R.C. No. E-1253.
- Supplement 8 to Tariff C.R.C. No. E-1804.
- Supplement 9 to Tariff C.R.C. No. E-1804.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 48987

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 22nd day of August, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Item 180A of Supplement No. 37 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 180A of Supplement No. 37 to Tariff C.R.C. No. 856, approved herein, are the first, second, and fourth class rates in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49002

In the matter of the Order of the Board No. 19570, dated June 21, 1913, as amended by Order No. 24938, dated April 25, 1916, directing railway companies subject to the jurisdiction of the Parliament of Canada, where shippers furnish slats for the floors of refrigerator cars not equipped with permanent slatted or double floors, or for the floors of box cars tendered to and accepted by shippers in lieu of refrigerator cars, for the carriage of fresh fruits, to allow the shipper \$3 per car for the said slatting; the shipper to be permitted to deduct the said allowance from the freight charges payable by him upon the shipment in such car in which the said slatting has been furnished; and that where shippers furnish slats for the said cars, an allowance of five hundred pounds in weight per car be made.

File No. 20747

FRIDAY, the 2nd day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed on behalf of the Canadian Freight Association and the Department of Agriculture, and its appearing that the allowances for the cost of racks, and for the weight thereof, as provided for by the said orders of the Board, are no longer necessary, the railway companies having entirely equipped their refrigerator cars with floor racks, and upon the report of the Assistant Chief Traffic Officer of the Board,—

The Board orders: That the said Orders Nos. 19570 and 24938, dated respectively June 21, 1913, and April 25, 1916, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49006

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 334 of the Railway Act, for approval of Supplement No. 2 to their Standard Passenger Tariff of Sleeping and Parlour Car Tolls C.R.C. No. E.S.-16 and C.R.C. No. W.S.-12, effective September 3, 1932, on file with the Board under file No. 9451.33.

FRIDAY, the 2nd day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 2 to the applicants' Standard Passenger Tariff of Sleeping and Parlour Car Tolls C.R.C. No. E.S.-16 and C.R.C. No. W.S.-12, effective September 3, 1932, on file with the Board under file No. 9451.33, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49007

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 48985, dated August 20, 1932, approving tolls published on live stock, carloads, in the Temiscouata Railway Company's Tariff C.R.C. No. 690.

File No. 34822.14

SATURDAY, the 3rd day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that the ninth class rates to Edmundston, New Brunswick, in effect prior to July 1, 1927, are in some cases lower than the normal rates certified under the said Order No. 48985, dated August 20, 1932,—

The Board orders: That the said Order No. 48985, dated August 20, 1932, be, and it is hereby, amended by adding at the end thereof the following: "Subject to the ninth class rates published in the Temiscouata Railway Company's Tariff C.R.C. No. 413 as maxima to Edmundston, New Brunswick."

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49013

In the matter of the application of the New York Central Railroad Company, under Section 323 of the Railway Act, for approval of by-law passed by the Executive Committee on August 24, 1932, authorizing O. R. Bromley, Freight Traffic Manager; E. W. Brunck, Assistant Freight Traffic Manager; F. H. Owen, as Chief of Traffic Bureau, in respect of freight traffic; and D. M. Bowman, Passenger Traffic Manager, and A. W. Foellger, General Passenger Agent, in respect of passenger traffic, from time to time to prepare and issue tariffs of the tolls to be charged in respect to the company's railway.

Case No. 3276

SATURDAY, the 3rd day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said by-law, passed by the Executive Committee of the New York Central Railroad Company on August 24, 1932, on file with the Board under Case No. 3276, be, and it is hereby, approved.

2. That Orders numbered 31250, 39607, 39922, and 44428, dated respectively July 11, 1921, September 20, 1927, November 23, 1927, and March 8, 1930, made herein, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR THE
MONTH OF JUNE, 1932

Railway accidents163 with 14 persons killed and 168 injured
Railway accidents at highway crossings..... 15 with 4 persons killed and 23 injured

	178	18	Killed	Injured
Passengers	18
Employees			2	112
Others			16	61
			18	191

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

ONTARIO

No. of
Accidents

- 4 Automobile—Auto ran into side of train. Ontario licences KW-450; K-124; 41-641; Mich. 726-221.
2 Automobile—Auto stalled on crossing. Ont. licences KL-66; NM-648.
1 Automobile—Auto drivers attention centred on car ahead. Mich. licence 151-294.
1 Auto truck—Truck driver attempted to beat train. Ont. licence 57-097-C.
1 Auto truck—Excessive speed of truck. Ont. licence 49-921-C.
4 Automobile—Ont. licences DV-290; CM-879; 2363-T; 50647-C.

SASKATCHEWAN

- 1 Automobile—Sask. licence 2-681.
1 Horse drawn vehicle.

Of the 15 accidents at highway crossings, 13 occurred at unprotected crossings, and 2 at protected crossings. Twelve (12) of the accidents occurred during the daylight hours and three (3) at night.

OTTAWA, September 9, 1932.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, October 1, 1932

No. 15

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 49019

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for authority to dispense with the use of switch lamps on main line switches in automatic signal territory where a searchlight type of automatic signal is located within two hundred feet of main track switches, single track.

File No. 18767.20

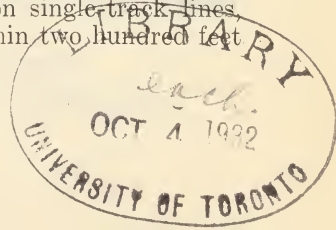
THURSDAY, the 8th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*F. A. LABELLE, *Deputy Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*G. A. STONE, *Commissioner.*

Upon considering the matter at conferences held in Ottawa, November 26, 1930, and March 16, 1932, the applicant company, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railway Trainmen, and the Order of Railway Conductors being represented; and upon consideration of the submissions made, and the recommendation of the Chief Operating Officer of the Board,—

It is ordered:

1. That the applicant company be, and it is hereby, authorized to dispense with the use of switch lamps on its main track switches, on single-track lines, equipped with the searchlight type of automatic signals, within two hundred feet of the said main track switches.



2. That "Special Instruction 'E'" in the applicant company's time-table be amended by adding the words, "In automatic signal territory (single track) on which lamps are not used on main track switches, as per revised rule No. 104, the automatic signal within two hundred feet of the outer main track switch will mark the 'station limits'."

3. That paragraph 1 of rule No. 104 of the General Train and Interlocking Rules, approved by the General Order of the Board No. 42, dated July 12, 1909, be amended by adding the words, "Except that lights will not be maintained on main track switches in single track automatic signal territory equipped with the searchlight type of signal, when the switch is located not more than two hundred feet in advance of the signal protecting the block in which the switch is located."

4. That paragraph 7 of the said rule No. 104 be struck out and the following substituted therefor:—

"7. When a train is standing on a passing track to meet or to be passed by a train, the engineer and the fireman, except in single track automatic block signal territory equipped with searchlight type of signal, must see that switches at the front of their train are in proper position."

5. That rules Nos. 403 and 634 of the said General Train and Interlocking Rules be amended by adding at the end thereof the words, "Except as provided in revised rule No. 104."

6. That the changes herein provided for be made effective November 1, 1932.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49028

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to increase the rates on pulpwood, as published in Item 185 of their Tariff C.R.C. No. E-1905, on five days' notice.

File No. 27612.66

TUESDAY, the 13th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., Chief Commissioner.
S. J. McLEAN, Assistant Chief Commissioner.

Upon its appearing that the rates as at present in effect were published due to a clerical error; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicants be, and they are hereby, granted leave to restore the rates on pulpwood from Longlac to West Fort William and Nipigon, Ontario, in effect before the publication of the said item 185 of their Tariff C.R.C. No. E-1905, on five days' notice.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49038

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 16th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 75 of Supplement No. 18 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 75 of Supplement No. 18 to Tariff C.R.C. No. E-4322, approved herein, is 9 cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49039

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of their Tariff C.R.C. No. 11, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

FRIDAY, the 16th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' tariff C.R.C. No. 11, covering tolls to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49046

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 20th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, namely:—

Supplement 60 to Tariff C.R.C. No. E-1235,
 Supplement 47 to Tariff C.R.C. No. E-1240,
 Supplement 3 to Tariff C.R.C. No. E-1829,

the same to be subject to the provisions of subsection 3 of section 3 of the said Act.

C. P. FULLERTON,
Chief Commissioner.

ORDER NO. 49044

In the matter of the application of S. H. Bullett, Chairman of the Express Traffic Association of Canada, acting under power of attorney, for permission to publish, on less than statutory notice, revised rates on merchandise between Regina and Weyburn, Saskatchewan.

File No. 27612.67

WEDNESDAY, the 21st day of September, A.D. 1932.

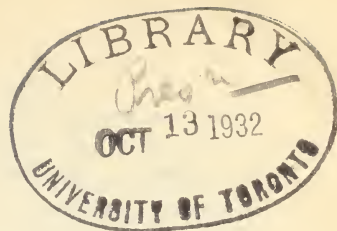
Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in the basis of rates published in Express Traffic Association Tariff C.R.C. No. E.T. 2020, issued to become effective October 3, 1932, and that shippers will not be adversely affected by the proposed correction,—

The Board Orders: That S. H. Bullett, Chairman of the Express Traffic Association of Canada, acting under power of attorney, be, and he is hereby, permitted to publish and file a supplement or tariff correcting the rates now shown in the said tariff C.R.C. No. E.T. 2020, effective October 3, 1932.

C. P. FULLERTON,
Chief Commissioner.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, October 2, 1932

No. 16

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of other Vehicles and Pedestrians at Protected Highway Crossings.

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from June 1, 1932, to August 31, 1932, show sixty-five cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from January 8, 1932, to June 30, 1932, and (Eastern Lines) from May 1, 1932, to July 31, 1932, show a total of fifty-four cases.

The Toronto, Hamilton & Buffalo Railway lines from June 1, 1932, to August 31, 1932, show one case.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplors this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
June 2.....	5.47 p.m...	Laframboise St., St. Hyacinthe, Que.	H-24708.....	Disk signal displayed and auto passed from south to north about 10' of train which was backing up toward west on west bound track.
June 7.....	10.04 K....	120th Avenue, Edmonton, Alta.	.....	Crossed over track in front of approaching train; rear end of truck slightly damaged.
" 10.....	1.21 p.m...	Fleet and Bathurst St., Toronto, Ont.	B-8275.....	Driver disregarded signals.
" 13.....	24.20 K....	Public crossing, New Street, Calgary, Alta.	Alta. 6305.....	When backing up caboose struck auto which attempted to cross tracks in front of train. No one injured.
" 17.....	.....	6th Street, Brandon, Man.	37-961.....	Ignored stop signal when train almost at crossing.
" 20.....	21.15 K....	Highway Crossing, Clouston, Sask....	Sask. 17019.....	Car came up to public crossing and stopped too close to track Struck by extra North 2674.
" 20.....	5.15 p.m...	Mill Street, Saint John, N.B.	C.J. 186.....	Ignored signal and when gates just about lowered, drove under them; auto did not stop.
" 27.....	17.20 K....	Water Street, Winnipeg, Man.	6305.....	Running up against stop disc when engine was approaching.
" 28.....	17.45 K....	Water Street, Winnipeg, Man.	16913.....	Running by stop signal.
" 28.....	12.35 p.m...	Fleet St., at Bathurst St., Toronto, Ont.	M-6197.....	Auto ignored stop signals, cut out of line of stationery traffic and over crossing, almost striking yard helper.
July 2.....	2.50 a.m...	Sturgeon Falls Road, Mlg. 72 Alderdale Subd., Ont.	CD-730.....	Party drove car off crossing down track about forty or fifty feet..
" 6.....	19 K.....	Water Street, Winnipeg, Man.	Man. 12157....	Running by stop disk when against him.
" 7.....	6.14 a.m...	Upper Lachine Road Montreal, Que.	Que. 371.....	Driver proceeded across crossing directly in front of approaching train, in spite of warning given by bell and wigwag.
" 10.....	7.00 p.m...	Garneau Public Crossing, Garneau, Que.	T. 4379.....	Did not stop before passing over crossing.
" 10.....	7.00 p.m...	Public Crossing, Garneau, Que.	A-481.....	Did not stop before passing over crossing.
" 11.....	17.20	Water Street, Winnipeg, Man.	13427.....	Ran by stop disk when against him.
" 13.....	3.20 p.m...	Fleet and Bathurst St., Toronto, Ont.	K-6915.....	Traffic stopped in both directions; train started to back south over above crossing when auto was driven around traffic westbound and collided with leading car, damaging auto and injuring one.
" 13.....	21.20 K....	Water Street, Winnipeg, Man.	Man. 6890.....	Ran by red light.
" 14.....	7.02 p.m...	Bridge Street, Hastings, Ont.	M.U. 129.....	Crossing tracks ahead of extra 3494 Westbound when stop sign was displayed.
" 14.....	21.25	Water Street, Winnipeg, Man.	25300.....	Ran by red light.
" 14.....	15.15	Water Street, Winnipeg, Man.	.....	Running by stop disk when train approaching.
" 15.....	9.00 p.m...	Lindsay Street, Drummondville, Que.	Que. L-5121....	Truck broke through gate.
" 18.....	7.40 a.m...	Victoria Park Ave., Toronto, Ont.	D-9111.....	Driver of car stopped then proceeded over crossing ahead of approaching train.
" 20.....	22.20 K....	Public crossing, north of station, Camrose, Alta.	Alta. 54971....	Attempted to cross track in front of approaching cars. Ignored stop signal.
" 20.....	19.40	Water Street, Winnipeg, Man.	13379.....	Ran by stop disk when against him
" 20.....	11.25 a.m...	Jones Avenue, Toronto, Ont.	F-1832.....	Driver pushed about 3 or 4 feet of his car under lower gates.

CANADIAN NATIONAL RAILWAY LINES—Continued

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
June 21.....	8.15 a.m.	Laframboise St., St. Hyacinthe, Que.	F.H. 942.....	Driver passed under watchman's stop signal.
" 22.....	18.00 K....	Water Street, Winni- per, Man.	Man. 7718.....	Ran by stop disk when against him.
" 22.....	8.15 a.m.	Laframboise St., St. Hyacinthe, Que.	72744.....	Ignored stop signal and went over crossing ahead of ap- proaching train.
" 27.....	17.05.....	Water Street, Winni- per, Man.	9935.....	Ran by stop disk.
" 27.....	17.10.....	Water Street, Winni- peg, Man.	1-1892.....	Ran by stop disk.
" 28.....	19.15.....	Water Street, Winni- peg, Man.	Man. 24470.....	Ran by stop disk.
" 28.....	5.50 p.m.	Lindsay Street, Lind- say, Ont.	Ont. NJ-171....	Passed stop sign in front of engine.
" 30.....	18.35.....	Water Street, Winni- peg, Man.	Man. 2730.....	Ran by stop disk when against him.
" 31.....	8.15 p.m.	Bourdage St. crossing, St. Hyacinthe, Que.	.....	Pedestrian lifted gates which had been lowered for approach of train.
Aug. 2.....	.....	Kingston Road, Co- bourg, Ont..	Que. 71664.....	Did not have car under control when approaching railway crossing.
" 2.....	21.00 K....	Water Street, Winni- peg, Man.	Man. 13571.....	Ran by red light.
" 2.....	19.15.....	Water Street, Winni- peg, Man.	Man. 7097.....	Ran by stop disk.
" 3.....	6.10 p.m.	Laframboise St., St. Hyacinthe, Que.	73822.....	Passed under stop signal.
" 3.....	11.35 p.m.	Front Street, Toronto, Ont.	K-7861.....	Auto ran through gate breaking same. Driver appeared to be under influence of liquor.
" 3.....	.....	Water street, Winni- peg, Man.	Man. 2802.....	Ran by red light.
" 5.....	.....	Water street, Winni- peg, Man.	Man. 19131.....	Ran by stop disk.
" 6.....	.....	Water street, Winni- peg, Man.	Man. 26031.....	Ran by red light.
" 8.....	1.15 p.m.	East end crossing, Wa- ter street, Summer- side, P.E.I.	6708.....	Backed on to and turned auto on railway crossing.
" 8.....	.....	Water street, Winni- peg, Man.	20325.....	Ran by stop disk.
" 16.....	.....	Water street, Winni- peg, Man.	13830.....	Ran by red light.
" 16.....	.....	Kingston road, Co- bourg, Ont.	Ont. 6611C.....	Did not have truck under con- trol approaching crossing.
" 18.....	1.30 p.m.	Public highway 16 poles West of MP. 130, Grand'Mere Subd., near St. Nor- bert, Que.	110116.....	Did not stop auto before going over crossing. Stopped car on track where it was hit by motor work car.
" 16.....	.....	Water street, Winni- peg, Man.	Man. 13830.....	Ran by red light.
" 20.....	6.45 p.m.	Bourdage street, St. Hyacinthe, Que.	M-1820.....	Gas bike crossed immediately behind train, lifting the gates in order to do so, and narrowly missed being hit by train.
" 20.....	10.30.....	2 poles west MP. 31, Elrose Subd., Wise- ton, Sask.	.....	Auto crossed immediately be- hind train; wagon which was attached to auto was hit and badly damaged.
" 23.....	7.50 p.m.	Jones avenue crossing, Toronto, Ont.	K-1587.....	Driver of auto ignored warning signal; put on speed and drove under gates as they were being lowered, but was able to back off track and avoid being hit by train.
" 23.....	5.00 p.m.	Logan avenue, Tor- onto, Ont.	C/7729.....	Driver of auto ignored warning signal and tried to cross tracks ahead of gates being lowered. Broke leg off one gate.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Aug. 24.....	2.12 p.m...	1st public crossing south of Collingwood sta., Alliston Subd., Ont.	JW-254.....	Turned up right of way between crossing and rails to avoid being hit by train. Bell ringing and whistle sounded. Driver had 60' to stop before reaching crossing.
" 25.....	11.10 a.m.	Brock street, Drummondville, Que.	.....	Driver of bread wagon broke crossing gate, and horse ran away.
" 25.....	4.00 p.m...	Moore's crossing, 1st crossing north of Falkenburg, mlge. 15-5, Huntsville Subd.	NY 3-B-748.....	Auto close to track before driver noticed train; tried to cross track ahead of train; buffer of engine caught rear of auto.
" 26.....	17.10 K....	Water street, Winnipeg, Man.	7-411.....	Ran through stop disk when against him.
" 26.....	21.30 K....	Water street, Winnipeg, Man.	4-179.....	Ran by red light.
" 27.....	19.50.....	Water street, Winnipeg, Man.	Man. 13389.....	Ran by red light.
" 27.....	1.00 a.m...	Strachan avenue, Toronto, Ont.	13830 K-6995.....	Auto ran into southwest gate breaking same.
" 27.....	1.40 p.m...	Josephine street, Wingham, Ont.	.....	Driver of bicycle ignored watchman's signal when train 331 was about to cross street.
" 29.....	21.35 K....	Water street, Winnipeg, Man.	13219.....	Ran by red light.
" 30.....	17.15 K....	Water street, Winnipeg, Man.	Man. 13-504.....	Ran by stop disk.
" 30.....	20.10.....	Water street, Winnipeg, Man.	Man. 8737.....	Ran by red light.
" 31.....	19.40.....	Water street, Winnipeg, Man.	Man. 1-746.....	Ran by red light.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)

Division	Date	Location	Particulars
KENORA.....	May 6.....	Keewatin, M.P. 3.15 Keewatin Subdivision.	Ford coupe Ontario licence AA-413, owned and driven by Mr. Holger Berglund, Keewatin, Ont., was approaching from south side of track and appeared as if trying to beat Extra East 5387 over crossing. Car was struck by train, which was moving about 10 miles per hour at the time, and was completely pushed around but not over-turned. Estimated damage \$66. No damage to equipment of this Company or to track.
WINNIPEG TERLS.	Feb. 16.....	Siding B. 14, Gas Work, Sutherland avenue.	Motor truck Manitoba licence T-1797 owned by H. Bosker was struck by engine 6302 while shoving cars into siding B-14. Foreman was on the point car and yardman on side of car about half-way back on drag. Foreman signalled and called to driver of truck to stop, but he did not do so. Left rear fender of truck slightly bent.
PORTAGE.....	Jan. 8.....	Macgregor.....	Team and sleigh drove directly in front of train No. 4. In order to avoid striking same, engineer applied brakes in emergency. All wheels all cars back of colonist car badly skidded. Team and sleigh appeared from north driving on to eastbound track, and just missed being struck, driver continuing his way towards the south.
	Jan. 22.....	Tupper street crossing, Portage la Prairie.	Dodge touring car, licence 69036, driven by J. Riach, owner E. A. Gilroy. Just as engine came to crossing, driver of car saw it and had to turn his car to the west and drive up westbound main line in order to avoid being struck. Driver of car failed to see stop signal on account of snow falling. In order to avoid striking auto engineer applied brakes in emergency. Fourteen pairs wheels skidded.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—Continued

Division	Date	Location	Particulars
BRANDON.....	April 13.....	Mileage 33, Estevan Subdivision, half-mile west of Hartney Station.	Engine 2073 while passing over crossing was struck on north side by an automobile, Manitoba licence 49-375, owned and driven by Jos. Voden, who resides about three miles north of Laurier. Estimated damage to auto \$20.
REGINA.....	May 16.....	Mile 76.2 Assiniboia Subdivision.	No. 310 struck grain wagon being hauled across track by tractor.
SASKATOON.....	Jan. 15.....	Mileage 85 Tisdale Subdivision.	When crossing over private crossing at Mileage 85 Tisdale Subdivision, near Golburn, sleigh struck on crossing due to defective runner. Train 329 struck rear of sleigh demolishing hayrack and slightly damaged sleigh. No injury to driver or horses.
VANCOUVER.....	Feb. 2.....	New Westminster—Front street.	Auto BC 2-264 going over tracks towards Brackman Ker's warehouse speeded up to cross ahead of No. 812 and was struck by train.
	Mar. 1.....	Mission—Horne Avenue	Auto BC 59-261 ran into side of Extra 2701 West standing on crossing.
	April 20.....	Vancouver—Columbia Avenue	Auto truck BC 72-447 struck by yard engine 6940.
	May 22.....	Hammond, Mile 105-06 Cascade S.D.	Auto truck (no licence plates) stalled on crossing and struck by No. 705.

Date and District	Time	Crossing	Auto No.	Remarks
MANITOBA DISTRICT— May 2, 1932..	9.30 K...	Montcalm street, Winnipeg.	T-3980.....	Ford truck driven by H. Bilisle going south on Archibald street struck north gate, breaking same.
SASKATCHEWAN DISTRICT— April 18.....	14.35 K...	Broadway, Yorkton..	U.T. 106.....	Crossed over track when stop signal up, about 20 ft. ahead of engine 863.
May 23.....	17.35 K...	" "	18-128.....	Crossed over track when stop signal up.
May 29.....	14.30 K...	" "	8-010.....	Crossed over track when stop signal up.
June 2.....	16.15 K...	" "	8-035.....	Crossed over track when stop signal up.
June 7.....	17.20 K...	" "	8-020.....	Crossed over track when stop signal up.
June 14.....	15.20 K...	" "	17-800 Man.....	Crossed over track when stop signal up.
June 23.....	17.05 K...	" "	2-112.....	Crossed over track when stop signal up.
June 27.....	13.15 K...	" "	20-800.....	Crossed over track when stop signal up.
ALBERTA DISTRICT May 12.....	16.30 K...	4th St. West, Calgary.	12-615.....	Truck ran into northeast gate, breaking same.
May 21.....	13.45 K...	" "	D-516.....	Arm of north gate struck top of car damaging same.
BRITISH COLUMBIA DISTRICT— April 4.....	17.40 K...	Powell St., Vancouver	BC 73-204.....	Ignored watchman's stop signal and engine had to stop to avoid hitting car.
April 10.....	17.30 K...	" "	BC 80-947.....	Ignored stop signal.
April 16.....	10.24 K...	" "	BC 57-025.....	Ignored stop signal.
May 1.....	12.37 K...	" "	BC 91-042.....	Ignored stop signal.
May 27.....	24.01 K...	" "	BC 82-928.....	Drove under descending gate when gate on opposite side was already down and had to back up to clear train.
E. & N. RAILWAY— June 12.....	10.30 K...	Mile 0.95 Esquimalt road.	BC 13-248.....	Semaphores and derails were set and gates lowered to protect a northbound extra freight train. Same had been in position about two minutes when signalman heard a crash and saw the

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Concluded*

Date	Time	Crossing	Auto No.	Dangerous Practice
				broken arms of the gate fly and the main arm of the gate apparently on the rebound strike the top of the motor car. Driver claims not to have seen the gates or lights and insists that the gate was lowered on the top of his car while crossing under same. His was the only car city bound from Esquimalt at the time, while there were three or four cars outbound from the city which stopped by the warning of the lowered gates.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)

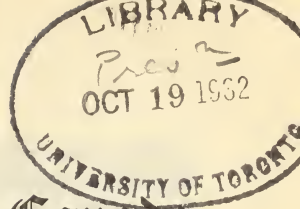
NEW BRUNSWICK DISTRICT—				
May 11.....	4.30 p.m...	Douglas Ave., Saint John.	J-2467.....	Auto dashed over crossing at speed of about 50 miles per hour.
" 21.....	.....	" "	.....	Auto stopped on crossing to let passengers get on.
" 30.....	11.35 p.m...	" "	J-5477.....	Auto passed under gates while same were being lowered.
June 1.....	6.35 p.m...	" "	J-651.....	Auto turned on crossing.
" 3.....	5.55 p.m...	" "	29.....	Motor cycle dashed over crossing at speed of about 60 miles per hour.
" 3.....	7.08 p.m...	" "	.....	Auto travelling at a high rate of speed just stopped in time to avoid breaking the gates.
" 3.....	7.10 p.m...	" "	.....	Boys pushed gates up just as No. 39 had passed crossing.
" 13.....	.....	" "	J-1807.....	Auto dashed over crossing at speed of approximately 50 miles per hour.
" 23.....	3.35 p.m...	" "	J-571.....	Auto dashed under gates, while same were being lowered for engine 2663.
July 21.....	6.50 p.m...	" "	J-2536.....	Auto dashed over crossing at high rate of speed.
" 25.....	3.07 p.m...	" "	J-3397.....	Auto dashed under gates while same were being lowered for No. 15.
" 30.....	6.35 p.m...	" "	J-4761.....	Auto dashed over crossing.
" 23.....	.....	Fairville.....	C-1741.....	Auto truck broke gate on West side of crossing. Bell was ringing at the time.
QUEBEC DISTRICT—				
June 2.....	.....	Crown St., Quebec....	Que. 12931.....	Gates had been lowered for incoming train when auto coming from South side failed to stop and struck Southeast gate, breaking same, and continuing on, broke Northeast gate. Bell was ringing but driver kept coming on.
" 9.....	.....	Bridge St., Quebec....	Que. T-1149....	Gateman had lifted North side gates and was in act of lifting South side when taxi, standing on North side of crossing, started over crossing and before gates could be raised, Southeast gate was broken. Driver of auto stated brakes on car failed.
" 30.....	.....	St. Valier St., Quebec	13361.....	Gates were being lowered for outgoing train when auto coming towards city stopped underneath gate No. 5 (Northwest gate) resulting in iron rod, supporting gate when down, going through top of auto.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Concluded*

Date	Time	Crossing	Auto No.	Dangerous Practice
May 21.....		Cote de Liesse Rd., Dorval, Qué.	Que. 60098.....	Auto coming from North ran under gate, bending rod on North gate. Gates were being lowered for freight train which was approaching from the West. Bell was rung before gates were lowered. Driver of auto ran under gate and got up on crossing as train was about 600 ft. from crossing.
July 8.....		Raglan St., Renfrew..	Ont. LS-291....	While Richard Burk of Pakenham, Ont., was backing out of yard, auto struck crossing gate breaking casting. Gates were up at the time.
ONTARIO DISTRICT—				
June 15.....	1.25 p.m...	Kingston Rd. Cross- ing, Mil. 90-05 Belle- ville Sd.	Que. X-666.....	Auto drove over crossing in front of Train No. 37, while wig-wag working.
May 19.....	6.00 p.m...	Ann. St., London.....		Auto skidded on oiled roadway and broke tip of crossing gate which was down for yard engine crossing street.
May 30.....	8.36 a.m...	Dundas St., Cooks- ville.		Heavy truck crossed tracks in front of No. 21 clearing train by about 400 ft. Wig-wag operating, crossing bell ringing and other cars standing at crossing waiting for train to pass.
June 10.....	8.36 a.m...	Dundas St., Cooks- ville.	K 8400.....	Auto crossed tracks ahead of fast passenger train, clearing locomotive by 600 ft. Wig-wags operating and bells ringing.
June 13.....	9.30 p.m...	Douglas Ave., Wind- sor.		Auto passed standing autos at crossing and shot across tracks in front of freight train and operating lever on left side front buffer struck auto but auto did not stop. Wig-wag working and crossing bell ringing, also engine whistle sounded for crossing.
July 24.....	11.55 a.m...	Quebec St., London...	U 5914.....	Auto disregarded Watchman's stop sign and crossed tracks in front of yard engine.
June 19.....		Bartlett Ave., Toron- to.	18355-C.....	Truck travelling north ran into and damaged south gate. Gates had been lowered for light engine approaching crossing from the east.
May 1.....		Front St. W., Toronto.	C-600.....	Auto travelling West ran into and broke point off No. 6 gate.

TORONTO, HAMILTON AND BUFFALO RAILWAY LINES

Date	Time	Crossing	Auto No.	Dangerous Practices
June 15.....	3.00 p.m....	Provincial Highway No. 3A at Coyle Yard, near Welland, Ont.	H.P. 684.....	Driver stopped auto, then proceeded against wigwag signal in operation, and hand signal from the watchman.



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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, October 15, 1932

No. 17

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Application of the Toronto Transportation Commission, as Managers of the Transportation System owned by The Corporation of the City of Toronto, for permission under Section 252 of The Railway Act, to cross Sunnyside Bridge, Toronto, with its railway, according to plans prepared by the Grand Trunk Railway Company approved by the Board in or about the year 1911.

(File No. 588.15)

FULLERTON, CHIEF COMMISSIONER:

On December 8, 1909, an order of this Board, No. 10169, was made authorizing the construction of the subway at Queen street, in the city of Toronto, known as the Sunnyside crossing of the Grand Trunk Railway. The order provided that the cost of the construction of the said subway and the maintenance thereof should be paid two-thirds by the Grand Trunk Railway Company and one-third by the city of Toronto.

On May 23, 1911, Order No. 14048 issued amending Order No. 10169 and substituting an overhead bridge in place of a subway at Sunnyside crossing. The order provided that the apportionment of the cost of the work and the maintenance thereof should be upon the basis provided in Order No. 10169.

The bridge was built by the Grand Trunk Railway Company in or about the year 1913. At that time the lines of the Toronto and York Radial Railway Company ended at the west end of the bridge, and the lines of the Toronto Railway Company ended at the east side of the bridge.

The franchise of the Toronto and York Radial Railway Company expired on December 23, 1911, and the city of Toronto assumed the ownership of the street railway.

Although no street railway cars were operating across the Sunnyside crossing prior to the construction of the overhead bridge, it is admitted that it was in the contemplation of the parties concerned in the construction of the bridge that eventually this would be done, and at the request of the city of Toronto the bridge was designed to take care of street car traffic if and when it was decided to operate across the bridge.

For a time after the expiration of the Toronto and York Radial Railway Company's charter it appears that this company was allowed to operate its

system, and while it was so operating the city of Toronto constructed tracks across the bridge, and the Toronto and York Radial Railway Company began to operate cars across the bridge. This was in the year 1914. Later on these cars were operated across the bridge by the Hydro-Electric Power Commission of Ontario for and on behalf of the city of Toronto. At a later date the city of Toronto took over the property and franchises of the Toronto Railway Company and began to operate the whole as one system.

In 1920 the operation of the system was entrusted by the city of Toronto to a commission, called the Toronto Transportation Commission.

No application for permission to cross Sunnyside Bridge ever appears to have been made to this Board until September, 1931, when the Canadian National Railways, which had taken over the Grand Trunk Railway in the year 1923 applied to this Board for a direction—

- (1) That the Transportation Commission shall obtain an order from the Board for authority to cross the Canadian National Railways with their tracks.
- (2) For a contribution from the Toronto Transportation Commission of ten per cent of the original cost of the bridge with interest thereon at five per cent from the date of the construction of the tracks of the Transportation Company until the amount is paid.
- (3) For an order that the Transportation Commission pay to the Railway Company one-tenth of the annual maintenance cost of the bridge from the said date to the present time, with interest thereon at five per cent from the dates on which such payments are from time to time made, and the same proportion of the maintenance charges accruing in the future.

The Toronto Transportation Commission opposed the application, and the matter came on for hearing before the Board on March 23, 1932. The Board took the view that inasmuch as the Toronto Transportation Commission was operating across the bridge without an order of the Board, it was a trespasser against whom contribution could not be ordered, but directed that unless the Toronto Transportation Commission applied for leave to cross the bridge before a fixed date, an order would go restraining it from crossing the bridge with its cars. In accordance with this direction of the Board the Toronto Transportation Commission now applies for leave to cross the bridge, and the question for the Board to decide is the terms upon which the order should go.

The present application is made by the Toronto Transportation Commission which, undoubtedly, is an entity against whom an order might be made for contribution. See *Canadian Pacific Railway Co. v. Toronto Transportation Commission et al*, 1930 A.C. 686, at p. 709. The fact remains, however, that the Toronto Transportation Commission is in reality an agent of the city of Toronto in charge of the operation of its electric tram lines and as such may be regarded for all the purposes of this application.

When the original order was made for the construction of the overhead bridge, the city of Toronto was contemplating the taking over of the Toronto and York Radial Railway Company and the operation of cars across this bridge, and at its instance the bridge was designed for that purpose. When the distribution of the cost and maintenance of the bridge was made, it can fairly well be assumed that the portion imposed upon the city covered not only its share of the actual construction and maintenance of the bridge itself, but also covered the privilege of operating cars across the bridge. There is nothing to suggest that the Grand Trunk Railway Company took any exception to the city of Toronto laying down tracks upon the bridge, or to the subsequent operation of the cars across the bridge. From the time the rails were laid down until 1923, when the Grand Trunk Railway was taken over by the Canadian

National Railways, no claim of any kind was made by the Grand Trunk Railway Company in respect of the user of this bridge by the Tramway Company or by the Toronto Transportation Commission, and it may be fairly well assumed that no such claim was ever intended to be made by the Grand Trunk Railway Company.

After the Canadian National Railways took over from the Grand Trunk Railway Company in 1923, it did not discover that it had any claim against either the city of Toronto, the Toronto Transportation Commission, or anyone else in connection with the use of this bridge until 1931. It is true that no formal permission was ever given by this Board to operate across the bridge, but probably this was an oversight, or it may be that in view of the agreement of the parties it was thought unnecessary.

Apart altogether from the staleness of the claim, my view is that the city of Toronto by contributing one-third of the cost of the bridge and its maintenance obtained the right to cross the bridge with its cars and that, if the question had been promptly raised, the city of Toronto would have been in a position to establish its right. I, therefore, am of opinion that the Toronto Transportation Commission should be given permission to cross this bridge without the imposition of any conditions.

OTTAWA, September 27, 1932.

Commissioner Norris concurred.

Re Sunnyside Bridge, Toronto, Ontario

(File No. 588.15)

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I agree in your disposition of the case. I am of opinion that the steam railway is precluded by its long delay from having the condition which it desires imposed in the order. I think that to regularize the matter the order may now go; at the same time I would suggest that this is going on particular facts, and it in no way derogates from the Board's rights to join the Toronto Transportation Commission as a party in participation in cost in any other application made on another state of facts arising.

OTTAWA, September 27, 1932.

ORDER No. 49075

In the matter of the application of the Toronto Transportation Commission, as Manager of the Transportation System owned by the Corporation of the City of Toronto, hereinafter called the "Applicant," under Section 252 of the Railway Act, for permission to cross Sunnyside Bridge, in the said City of Toronto, with its railway, according to plans prepared by the Grand Trunk Railway Company, approved by Order No. 14866, dated September 22, 1911.

File No. 588.15

WEDNESDAY, the 28th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 22, 1932, in the presence of counsel for the applicant, the city of Toronto, and the Canadian National Railways, and what was alleged,—

It is ordered: That the applicant be, and it is hereby, granted leave to cross the said Sunnyside bridge, in the city of Toronto and province of Ontario, with its railway, according to the said plans approved by the Board.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49069

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 178 and 276 of the Railway Act, for (1) approval of the deviation of their line of railway between mileage 41.55 and 46.0 Alexandria Subdivision, in the vicinity of St. Louis, in the Province of Quebec; and (2) authority to open for the carriage of traffic the said portion of line so diverted, as shown on the plan, profile, and book of reference No. 4-E-620, revised September 17, 1931, on file with the Board under file No. 37131.5.

WEDNESDAY, the 28th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered:

1. That the diversion of the applicants' line of railway between mileage 41.55 and 46.0 Alexandria Subdivision, in the vicinity of St. Louis, in the province of Quebec, as shown on the said plan, profile, and book of reference combined on file with the Board under file No. 37131.5, be, and it is hereby, approved.

2. That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the said line of railway between mileage 41.55 and 46.0 Alexandria Subdivision.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49073

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 28th day of September, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders: that the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates

Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 48 to Tariff C.R.C. No. E-1240.
 Supplement 5 to Tariff C.R.C. No. E-1245.
 Supplement 21 to Tariff C.R.C. No. E-1247.
 Supplement 5 to Tariff C.R.C. No. E-1737.
 Supplement 11 to Tariff C.R.C. No. E-1804.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49092

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of their Tariff C.R.C. No. 12, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

TUESDAY, the 4th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' Tariff C.R.C. No. 12, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49081

- In the matter of the complaint of P. G. Davies, of Clyde, Alberta, on behalf of interested shippers, and of the Boyle Board of Trade, concerning the rate on grain and flour, in carloads, from Boyle, Alberta, to Vancouver, British Columbia, for export.*

File No. 34123.77

MONDAY, the 3rd day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon consideration of what is on file with the Board concerning this matter,—

It is ordered: That the Northern Alberta Railways be, and they are hereby, directed to publish, effective October 7, 1932, a rate of 22 cents per 100 pounds on grain and flour, in carloads, for export, from Boyle, Alberta, to Vancouver, British Columbia.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH
OF JULY, 1932

Railway Accidents	134, with 14 persons killed and 127 injured
Railway Accidents at highway crossings,	16, with 13 persons killed and 15 injured

150	27	142
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	Killed	Injured
Passengers	—	29
Employees	1	76
Others	26	37
	27	142

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

NOVA SCOTIA

No. of
Accidents

- 1 Automobile—Ran into side of train. N.S. licence 42-196.

NEW BRUNSWICK

- 1 Automobile—N.B. J-2401.

QUEBEC

- 1 Auto truck—Truck driver failed to stop for crossing. Que. licence F-175.

ONTARIO

- 2 Automobile—Ran into side of train. Ont. licences, C-4935; CB-292.
 1 Automobile—Ran into rear of hand-car. Ont. licence ER-929.
 1 Automobile—Excessive speed of auto. Ont. licence FS-673.
 1 Automobile—Auto driver attempted to beat train. Ont. licence X-6979.
 5 Automobile—Ont. licences, X-8558; K-6915; EU-469; 25-604C; Mich. licence 206-002.
 1 Pedestrian.

MANITOBA

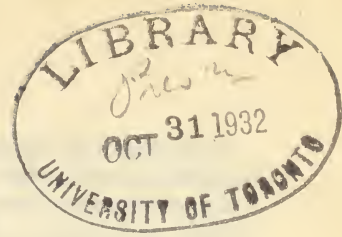
- 1 Automobile—Ran into side of train. Man. licence 69503.

SASKATCHEWAN

- 1 Automobile—Sask. licence 3-206.

Of the 16 accidents at highway crossings 14 occurred at Unprotected crossings, and 2 at Protected crossings. Thirteen (13) of the accidents occurred during the daylight hours and three (3) at night.

OTTAWA, October 1, 1932.



The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Canadian Vickers, Limited, Montreal, Quebec, for an Order of the Board declaring the Legal Rate in effect from June 10, 1929, to November 9, 1929, on shipments of Structural Steel, in carloads, from connection of the Canadian Pacific Railway and Harbour Commissioners Railway, Montreal wharf to Highlands, Quebec, said shipments originating on applicants' siding on Harbour Commissioners Railway.

File No. 38354.

BY THE BOARD:

The applicant and the railway company filed written submissions setting out their position and contentions respecting the matter at issue and are satisfied to have the case disposed of upon such submissions and without a public hearing.

During the period from June 10 to November 9, 1929, the applicant shipped from its plant at Maisonneuve (Montreal), located on a siding served by the Harbour Commissioners Railway, a number of carloads of structural steel for use in the construction of the plants of the Fleischman Company and Distillers Corporation, situated at Highlands, P.Q., south of the Lachine canal, and it is with respect to this traffic that the question is raised. For switching the cars from its connection with the Harbour Commissioners Railway on Montreal Wharf to Highlands, the Canadian Pacific Railway charged 9 cents per 100 pounds, being the 6th-class Local Switching Rate provided on pages 9 and 10 of its Tariff, C.R.C. No. E-4257. Applicant contends that Item 680 in the same tariff was applicable, which provided for a rate of 3 cents per 100 pounds, on iron and steel articles (classified 5th class or lower in Canadian Freight Classification), from Montreal Wharf to Highlands. Applicant states the item naming the 3 cent rate is "utterly unqualified" and, consequently, must be applied, and gives reference to statements made by the Board in various cases to the effect that in construing a tariff the intention has to be derived from the exact words used and not from the intention which it is alleged the tariff makers had in mind; that tariffs, when ambiguous, if they can reasonably and properly be read in case of the shipper, following the usual practice are so construed.

Applicant also contends that the 9 cent rate charged was exorbitant in comparison with the rate published in item 440-B of the same tariff, which, on the same commodities, from Hochelaga (ex Harbour Commissioners Railway) to certain named firms at Highlands, provided for a rate of 3½ cents per 100 pounds. This item is restricted in its application to certain named plants, which, the railway states, use Iron and Steel Articles in the ordinary course of their operations. The plants to which the shipments here in question moved are situated beyond the point to which delivery is made to the firms named in item 440-B. If there was here involved the reasonableness of the rate for the future, the comparison might be pertinent, but it is understood there is no further movement of this traffic to the Fleischman Company or to Distillers Corporation, and the Board is not asked to fix a rate for future application, but only to rule upon the legal rate effective during the period mentioned in 1929. If the legally published rate was charged on the traffic involved, the Board has no power to make a retro-active alteration in the tariff and order refund of tolls which have been charged.

On page 22 of the tariff in question the following items are published.

Item No.	Commodity and Movement	Rates in cents per 100 lbs. (Except as specified)	
		Private Sidings	Team Tracks
	All Freight (Export and Import) (except as specified in Items 670, 680 and 690), carloads, minimum 50,000 lbs.		
660	<div> <div>Between *Montreal Wharf, Que., and</div> <div> Angus, Quebec. Atwater, Quebec. Cote des Neiges, Que. Cote St. Paul, Que. †Highlands, Que. Hochelaga, Que. Mile End, Que. Montreal, (Place Viger), Que. Montreal West, Que. Outremont, Que. St. Henry, Que. St. Luc Jct, Que. Westmount, Que. </div> </div>	2½ 4 3 4 3½ 2½ 2½ 3½ 3 4 3½ 4	3½ 5 4 5 4½ 3½ 3½ 4½ 4 5 4½ 5
670	Grain Products, carloads, minimum 50,000 lbs. From Mile End, Que., to Montreal Wharf, Que. (For Export)	1½	
	Includes Harbour Commissioners' Ry. Switching charges; but exclusive of Wharfage, Cartage, or other Terminal Charges.	(Applicable only on traffic on which the C.P. Ry. has received a road haul.)	
680	Iron and Steel Articles (classifying 5th class or lower in Canadian Freight Classification), carloads, minimum 50,000 lbs. From *Montreal Wharf, Que., to †Highlands, Que.	3	
690	Livestock, carloads. From East End Cattle Market, Que., to *Montreal Wharf, Que. (for Export)		\$8 per car.

†Shipments to or from Highlands, Que., which are switched by the Dominion Bridge Co., Ltd., will be subject to an additional charge of \$5 per car.

*Exclusive of Harbour Commissioners' Ry. Switching and other terminal charges.

There was an amendment to the wording of item 660 in Supplement 36, effective October 13, 1928, which has no bearing on the issue here. In Supplement 38, effective December 17, 1928, the rate in item 670 was withdrawn and cancelled, and it was provided that thereafter the rates shown in item 660-C would apply. All the items on this page of the tariff relate to Export and Import freight. Item 660 plainly stipulates that it applied on all export and import freight, except as specified in items 670, 680 and 690.

We, therefore, consider and find that item 680 was not unqualified in its application, but is linked up with, and has to be read in conjunction with, item 660, which specifically makes reference thereto; that it was qualified by item 660 and was applicable only on import and export shipments of the commodi-

ties named therein (the traffic in question was not import freight, but structural steel manufactured or fabricated at the Applicant's plant); that, when so read, the tariff is not ambiguous; that, under the provisions of Canadian Pacific Railway Tariff, C.R.C. No. E-4257, the legal rate on the traffic in question was 9 cents per 100 pounds, as provided on pages 9 and 10 of said tariff.

OTTAWA, October 12, 1932.

A. D. CARTWRIGHT,

Secretary.

ORDER No. 49122

In the matter of the application of Canadian Vickers Limited, of Montreal, Quebec, hereinafter called the "Applicants," for an Order declaring the legal rate in effect from June 10, 1929, to November 9, 1929, on shipments of structural steel, in carloads, from the connection of the Canadian Pacific Railway Company's and the Montreal Harbour Commissioners' railways, Montreal Wharf, to Highlands, Quebec, the said shipments originating on the applicants' siding on the Montreal Harbour Commissioners' railway.

File No. 38354

FRIDAY, the 14th day of October, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

Upon reading the submissions filed on behalf of the applicants and the railway company,—

The Board declares: That the legal rate in effect from June 10, 1929, to November 9, 1929, on the said shipments of structural steel, in carloads, from the connection of the Canadian Pacific Railway Company's and the Montreal Harbour Commissioners' railways, Montreal Wharf to Highlands, Quebec, was 9 cents per 100 pounds, as provided on pages 9 and 10 of the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4257.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 49131

In the matter of the application of Nestle's Milk Products (Canada), Limited, of Toronto, Ontario, for a ruling of the Board with respect to certain changes in routing published on pages 13 and 14 in Supplement No. 80 to Agent G. C. Ransom's Tariff C.R.C. No. 107, issued August 26, 1932, effective September 5, 1932, which have the effect of constituting an advance in rates.

File No. 38474

MONDAY, the 17th day of October, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the application, the reply of the Canadian Freight Association, and the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the portion of Supplement No. 80 to Agent G. C. Ransom's Tariff C.R.C. No. 107 which, on pages 13 and 14 thereof, provides

for changes in routing which have the effect of constituting an advance in rates, be, and it is hereby, disallowed as from September 5, 1932, owing to lack of statutory notice being given.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49133

In the matter of the various Orders of the Board issued from time to time approving tolls and authorizing the Bell Telephone Company of Canada to charge the telephone tolls published in its respective tariffs filed with the Board;

And in the matter of Section 375, Subsection 2, of the Railway Act, and of the tariffs of the Bell Telephone Company of Canada as on file with the Board at the date hereof.

Case No. 995

MONDAY, the 17th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
F. A. LABELLE, *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders: That all tariffs of the Bell Telephone Company of Canada, including all supplements, cancellations, revised sheets, and revisions thereto and thereof, filed with the Board at the date of this order, be, and the same are hereby, approved as of the respective dates of the filing thereof.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49144

In the matter of the application of H. G. Toll, Agent of the Trans-Continental Freight Bureau, for permission to make effective, on less than statutory notice, a supplement to Tariff C.R.C. No. 598, to correct an error.

File No. 27612.68

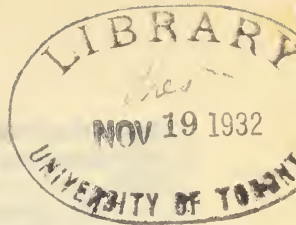
FRIDAY, the 21st day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in not providing exception to the application of item No. 75-B of Tariff C.R.C. No. 598 in the case of certain railway companies,—

The Board orders: That the said H. G. Toll be, and he is hereby, permitted to publish and file, upon three days' notice, a supplement to Tariff C.R.C. No. 598, amending item No. 75-B, to correct an error in the application thereof.

C. P. FULLERTON,
Chief Commissioner.



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Application of the City of Vancouver, B.C., for an Order for the elimination of the grade crossings on English Bay Branch of the Canadian Pacific Railway at Pender, Hastings, Carrall, Cordova, Powell, Columbia and Alexander Streets, in the City of Vancouver; and for an Order for the permanent diversion of the railway by the construction of a tunnel.

File 36005.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Judgment in the above matter issued under date of May 29, 1929. The following is excerpted from the Judgment:—

"A feature of the situation is the fact that along the branch line of railway between Alexander and Pender streets, there are no less than six industrial spurs serving warehouses and establishments in that locality. An inspection covering twelve days, made by the Board's engineer, has led him to the conclusion that these spurs are not in very active use, but nevertheless it is an element of the situation which will have to be provided for. The city claims that very little use is made of these sidings, and Mr. Simmons records this statement as correct, and he has reported that very little damage would result from their removal. In view of the comparatively small use of these industrial spurs, their disappearance along with the main tracks of the English Bay Branch between the connection of the latter with the main line north of Alexander street and the south side of Pender street cannot be considered of sufficient importance to present an insurmountable obstacle to the fulfilment of the project."

The matter was set down and spoken to at Vancouver on June 21 and 22, 1929. Under date of December 18, 1929, Order No. 44022 issued apportioning cost.

At the hearing, in addition to the city, the Canadian Pacific Railway Company and the British Columbia Electric Railway Company, there were represented Messrs. McLennan, McFeely, Ltd.; Brig.-General A. D. Miller; Simson, Balkwill & Co., Ltd.; G. H. Cottrell, Ltd.; and the B. T. Rogers Estate. The parties

appearing were interested in properties served by the spur tracks to which reference has already been made in the excerpt from the Judgment of May 29, 1929.

An opportunity was afforded to file written submissions bearing on the matter. The spur users who set forth their interests in the industrial spurs submitted, through their solicitors, a written statement dated August 16, 1929. It was set out that injury had been caused by the loss of the spurs in question and compensation was claimed.

Under date of January 30, 1930, a written submission by the Corporation Counsel for the city of Vancouver was filed. The Canadian Pacific Railway Company stated that it had nothing which it could usefully add to the submissions which Counsel for the city of Vancouver had made, and the railway therefore concurred in the submission.

The parties were asked to state specifically what their position was in regard to the question of compensation, if any, being left to be determined under the provisions of the arbitration sections of the Railway Act. The submissions made have been carefully considered.

The city of Vancouver submitted that there was no legal right of compensation to the claimants based on the removal of the tracks in question, said removal being pursuant to a mandatory Order of the Board; and it further contended that the Board of Railway Commissioners for Canada was without jurisdiction in the premises to order payment of compensation in respect thereof. Reference was made to cases which decide that no right to compensation exists for damages due to mere operation or vibration or user.

The terms of the contracts between the railway company and the spur users in question were gone into at length. It was pointed out that the agreements in question were terminable by either party on sixty days' notice; and it was urged that this was in the nature of a tenancy or rental agreement. It was further contended that it was not a right or privilege that could be classed within the category of those that run with the land.

The Canadian Pacific Railway Company has filed certified copies of all the siding agreements concerned:—

1. Siding agreement between Simson, Balkwill & Co., Ltd., and the Canadian Pacific Railway Company dated August 1, 1918. This has a rental charge of \$36 per annum. Paragraph 11 provides that either party may terminate the agreement by leave of the board and upon giving the other party notice in writing of its intention so to do, and naming in such notice a day at least two months after the giving of the notice on which the agreement is to terminate; and on the day so named, or on such other date as the Board may fix, the agreement is to terminate.

2. Siding agreement between A. D. Miller and the Canadian Pacific Railway Company dated May 1, 1913. This has a rental charge of \$25 per annum. Paragraph 11 provides for termination on two months' notice as above; all reference to the Board or to leave being granted by it is stricken out.

3. Siding agreement between Donald K. Campbell and the Canadian Pacific Railway Company dated March 1, 1910, has a rental charge of \$6.02 per annum. Paragraph 12 of this agreement provides the same procedure as set out in the Simson, Balkwill & Co's agreement above.

4. Siding agreement between McLennan, McFeely Co., Ltd., and the Canadian Pacific Railway Company dated September 1, 1911. This has a nominal rental of \$1 per annum. Paragraph 12 provides for termination of agreement on same terms as in the Miller agreement. The Board is not referred to.

5. Siding agreement between Benjamin T. Rogers and the Canadian Pacific Railway Company dated April 1, 1911. There is a rental charge of \$14 per annum. Paragraph 12 provides for the termination of the agreement under the same conditions as in the Miller agreement. The Board is not referred to.

6. Siding agreement between G. H. Cottrall Company and the Canadian Pacific Railway Company dated March 1, 1925. There is an annual rental charge of \$25. Provision is made for termination of the agreement under the same conditions as in the Miller agreement. There is no reference to the Board.

It appears that out of the six siding agreements involved, in only two cases, viz., the D. K. Campbell and Simson Balkwill Co's agreements, is provision made requiring leave of the Board in connection with the termination of agreements upon notice. In the case of the Campbell agreement, application was made by the Canadian Pacific Railway Company, under date of March 3, 1932, for an Order authorizing the railway to terminate the said siding agreement as of June 1, 1932. Due notice having been given, Order No. 48431, of April 10, 1932, issued granting leave.

Jurisdiction to order the works is admitted as existing under Section 257; but it is contended by Counsel for the city of Vancouver that the right to compensation set out in said section is limited to the right arising out of or incident to construction or taking or cutting, or other actual injury to the land itself; and that the legal right thereto cannot be extended or enlarged by an administrative Order of the Board. It is further contended that such claim must be in the nature of a legal right founded in some express provision of the statute itself, or it fails.

Reference is made to *C.P.R. Co. vs. Vancouver Ice & Cold Storage Co.*, 23 *Can. Ry. Cas.*, 1, and it is stated the Board points out there that the right to a siding was not a perpetual right, and Counsel for the city of Vancouver continues—"If, therefore, the claimants' alleged right is not a perpetual legal right which is infringed, they have no case for compensation."

The diversions and works concerned were carried on under Section 257 of the Railway Act. That section, by subsection 2, sets out—

"When the Board of its own motion, or upon complaint or application, makes any Order that a railway be carried across or along a highway, or that a railway be diverted, all the provisions of law at such time applicable to the taking of land by the company, to its valuation and sale and conveyance to the company, and to the compensation therefor, shall apply to the land, exclusive of the highway crossing required for the proper carrying out of any Order made by the Board."

While Section 257 speaks definitely, it is recognized, however, by those speaking for the spur users that the interests of their clients, so far as compensation is concerned, are outside of Section 257.

Section 39 of the Railway Act provides, inter alia, that the Board may order upon what terms and conditions as to payment of compensation or otherwise any works which it has authority under the Act to direct or permit shall be provided.

It is contended by the spur users that Section 39 read with Section 257 authorizes the Board to order compensation to be paid to the parties for any damages they may be able to show they have suffered by the removal of the spurs, in addition to that authorized by the statute, under the expropriation provisions of the Act.

The decision in the *Hardisty Street Case—G.T.P. Ry. Co. vs. Fort William*, 13 *Can. Ry. Cas.*, 167, is material. There, the Grand Trunk Pacific Railway Company having obtained the consent of the municipality to use certain public streets in Fort William applied to the Board for leave to construct and for approval of the location of the line of their railway upon and along the highways in question. None of the land abutting on these highways was to be appropriated for the purposes of the railway, nor were the rights or facilities of access thereto to be interfered with, except in so far as might result from in-

convenience caused by the construction and operation of the railway upon and along the streets. In granting the application, the Board made the Order complained of, subject to the condition that the company should "make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway along any streets." The majority of the Supreme Court held that the provisions of Section 47 of the Railway Act, R.S.C., 1906, Chap. 37, were sufficiently broad to grant the power to the Board which it was exercising.

Davies J., dissenting, said at p. 275:

"My construction of the section now before us is that the conditions which the Board may legally make their Order subject to must be such conditions as are not inconsistent with the provisions of the statute."

At p. 276, he used the following language:

"Much reliance is naturally placed upon section 47 of the Act which it is contended confers absolutely arbitrary and uncontrolled powers upon the Board.

"My construction of that section is that when it is invoked it must be read in conjunction with the special section or sections of the Act under which the Board for the time being is asked to make or on its own initiation makes an order.

At p. 283, Duff J., also dissenting, said:

"It is sufficient for the purposes of this case to say, and my opinion is, that the company's obligations in respect of compensation have been specially dealt with in the other provisions of the Act, and those obligations the Board have no authority to add to except in cases of respect of which such authority is given by Parliament, either expressly or by necessary implication, and, moreover, that no such implication arises from the authority given *simpliciter* to grant or refuse leave."

The case was appealed to the Privy Council where it was heard in 1911, (1912) *Appeal Cases*, p. 224. Decision was given by Lord Shaw of Dunfermline, who, at pp. 228-229, used the following language:

"The real question, however, is whether, under the 47th section of the Railway Act of 1906, the Board was vested with a power of widening the scope of the compensation provided for in the statute itself. The language of s. 47 gives power to the Board to direct that its order shall come into force, inter alia, upon the performance 'of any terms which the Board may impose upon any party interested.' This language is certainly general and comprehensive; but, in their Lordships' view, it cannot be interpreted as being designed to alter the other and specific provisions of the statute as to the compensation payable by the railway company. The particular application now being dealt with falls within the scope of s. 237, which applies to 'any application for leave to construct the railway upon, along, or across an existing highway.' By subsection 3 of that section it is provided that when the application is of that character 'all the provisions of law at such time applicable to the taking of land by the company, to its valuation and sale and conveyance to the company, and to the compensation therefor, shall apply to the land exclusive of the highway crossing required for the proper carrying out of any order made by the Board.' It does not appear to their Lordships that it would be safe to infer from the generality and comprehensiveness of the powers of the Board, and apart from any specific reference to the compensation itself and the parties

entitled thereto, that these provisions of s. 237 were liable to be altered, abrogated, or enlarged by the exercise of the Board's administrative power under s. 47."

From the standpoint of what is now before the Board, the language used in regard to Section 47 is especially significant. It was pointed out that it was contended that under Section 47 the Board had power to widen the scope of the compensation provided for in the statute itself. It was recognized by their Lordships that very general and comprehensive language is used, but it is held that this language, general and comprehensive as it is, cannot be interpreted as being designed to alter the other and specific provision of the statute as to the compensation payable by the railway company.

What was said when Section 47 was relied upon is equally pertinent when Section 39 is relied upon. The fact that the powers given under Section 39 are wider than those under Section 47 does not limit the applicability of the reasoning in the present case. Section 39 is a general clause dealing with compensation while Section 257 is a specific clause and provides for the compensation to be paid in connection with the construction of specific works therein provided for. See also, in regard to Sec. 47, *Bell Telephone Co. vs. City of Ottawa and County of Carleton*, 22 *Can. Ry. Cas.*, 421 at p. 424.

If persons owning property along side of a projected railway cannot recover damages except in cases where their property has been taken or injuriously affected, it does not appear to be justifiable to hold that they are in a stronger position where an existing railway is being taken over.

Section 257 makes provision as to land taken. Section 255 was amended after the decision in the *Hardisty Street Case*, and provision is now made that where the Board has granted leave to carry a railway along or across an existing highway, there is provision that the compensation, if any, payable by the company to adjacent or abutting landowners shall be determined under the arbitration sections of the Railway Act.

The fact that the Railway Act was specifically amended in Section 255, in so far as the question of compensation is concerned, and was not amended in this way in connection with other sections has significance. The maxim *expressio unius est exclusio alterius* is applicable.

The law is clear in regard to the conditions under which damages will be awarded. In general, severance is an important factor. Severance does not enter in in the present instance; in fact, the matter has its basis in contract and the terms of the contracts between the railway company and the spur users are important. As indicated, these special contracts are terminable on notice.

When the Board's Order issued, the plan approved involved elimination of the spurs. The working out of the plan under the Order of the Board has involved a much longer period of time than the sixty days specified in connection with the question of notice. On careful consideration, it does not appear that the matter of compensation raised by applicants falls within the established criteria of arbitration and, therefore, it would appear that the Order asked for should not issue.

October 21, 1932.

Commissioners Norris and Stoneman concurred.

ORDER No. 49161

In the matter of the Order of the Board No. 42748, dated June 1, 1929, directing the Canadian Pacific Railway Company to construct a tunnel connection between the main line and False Creek Yards, by way of Thurlow and Dunsmuir Streets, in the City of Vancouver and Province of British Columbia;

And in the matter of the application of certain property owners affected for the payment of compensation alleged to be due owing to the removal of the tracks of the Canadian Pacific Railway Company's English Bay Branch, in the said City.

File No. 36005.

WEDNESDAY, the 26th day of October, A.D. 1932.

S. J. McLEAN, *Asst. Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed on behalf of users of industrial spurs affected by the construction of the said tunnel, the city of Vancouver, and the railway company,—

The Board Orders: That the application be, and it is hereby, refused.

S. J. McLEAN,

Asst. Chief Commissioner.

In the matter of the application on behalf of the Quebec Railway, Light and Power Company for a rehearing and review of Order of the Board No. 48691, dated June 1, 1932, apportioning the cost of constructing and maintaining a subway under the tracks of the Canadian National Railways at La Canardiere Road, in the City of Quebec.

File No. 29373

FULLERTON, CHIEF COMMISSIONER:

This is an application by the Quebec Railway, Light and Power Company to review order of the Board No. 48691, dated June 1, 1932.

On September 29, 1930, an order of the Board, No. 45502, issued directing the construction by the Canadian National Railways of a subway under the tracks of that company at Canardiere road, in the city of Quebec, and reserving the question of the costs of the said work.

The subway was constructed and on May 12, 1932, the parties interested appeared before the Board and were heard on the apportionment of costs. The parties interested were the Canadian National Railways, the city of Quebec and the Quebec Railway, Light and Power Company (hereinafter called the company). The main dispute at the hearing was over the distribution of costs as between the city of Quebec and the company. The city claimed that the company should pay one-third of the costs of the subway, basing this claim upon an agreement entered into between the city and the company bearing date November 25, 1919. By this agreement, in consideration of an increase in fares, the company among other things agreed "to construct a subway on Beauport road, in order to cross with its line the line of the Canadian National Railways, the company agreeing to pay at least one-third of the cost of the said subway."

The company admitted the execution of the agreement, but contended that it was subsequently rescinded, first, by the expiration of the company's franchise in 1925 and, second, by the city accepting the construction in 1924 of an inter-locker in lieu of the subway.

I held that the agreement was in full force and effect and that the company was bound by the agreement as between itself and the city of Quebec to contribute one-third of the cost of the subway. See reasons for judgment, 22 Board's Judgments and Orders 80.

On the rehearing Mr. St. Laurent, who appeared for the company, in addition to the grounds taken on the previous hearing contended that the contract was null and void from its inception. He put the matter in this way.

The company was declared by chapter 59, 58 and 59 Victoria (Dominion) to be a work for the general advantage of Canada and is, therefore, subject to the provisions of the Dominion Railway Act. The matter of rates to be charged on said railway is for the Board of Railway Commissioners, and the city in attempting to contract respecting rates was dealing with a matter over which it had no jurisdiction.

Mr. St. Laurent took the further ground that the order of the Board dated January 8, 1923, authorizing the company to construct its tracks across the tracks of the Canadian National Railways, to be protected by a half-interlocking plant, amounted to a refusal by the Board to authorize the construction of the subway to which the contract referred, and rendered impossible the performance of the obligation of the company to construct it, and thereby extinguished the said obligation under the provisions of the Civil Code of the province of Quebec.

The further point is taken that the contract of November 25, 1919, is made by the Quebec Railway, Light, Heat and Power Company, Limited, while the order is against the Quebec Railway, Light and Power Company, which is alleged to be an entirely different corporation.

It will be thus seen that the validity of the agreement of November 25, 1919, is questioned on a number of grounds, and the point is taken that the Board has no jurisdiction to inquire into and determine the issues so raised.

The jurisdiction of the Board, it is said, is only to determine "what companies, municipalities or persons are interested in or affected by an order dealing with such works, and in what proportions they should because of their interest therein have the cost thereof apportioned among them, leaving it with the regular courts of justice to deal with and give effect to such rights or remedies for indemnity or otherwise as the parties may have against each other arising out of the contract".

This point was not taken on the previous hearing, but is now one of the main grounds upon which the Board is asked to vary the terms of the order.

Section 39 of the Railway Act, subsection 2, provides as follows:—

"(2) The Board may, except as otherwise expressly provided, order by whom, in what proportion, and when, the cost and expenses of providing, constructing, reconstructing, altering, installing and executing such structures, equipment, works, renewals, or repairs, or of the supervision, if any, or of the continued operation, use or maintenance thereof, or of otherwise complying with such order, shall be paid."

There are numerous cases in the reports in which the Board has given effect to the agreements of parties as to the distribution of the cost of works ordered by the Board.

In *Grand Trunk Pacific Ry. Co. v. City of Edmonton*, 15 C.R.C. 445, the Board granted leave to the City of Edmonton to cross with its municipally-owned street railway the tracks of the Grand Trunk Pacific Railway and imposed the cost of construction and maintenance equally upon the city and the railway. The railway company appealed on the ground that it had an agreement with the city to construct and operate this railway without charge.

The Supreme Court held that the Board had jurisdiction to make the order.

Two questions were submitted to the Supreme Court, first, whether the Board was bound by the agreement between the City of Edmonton and the Grand Trunk Pacific Railway Company; second, whether, even if the Board were so bound, the provisions of section 7 of the agreement do not mean that the railway company should not pay such expense as is placed upon it by the Board's order. Both questions were answered in the negative.

DAVIES, J., at p. 449, said:—

"I think the agreement was an element to be considered by the Board in determining the rights of the parties with respect to the cost of constructing and maintaining the crossing."

In re Montreal Park and Island R.W. Co. v. City of Montreal, 11 C.R.C. 254. On the hearing of a complaint alleging unjust discrimination in respect of fares, the Board refused to take into consideration a certain agreement which might justify the granting of special rates, and ordered the company to furnish the service to persons using the tramway in both municipalities at the same rate of fare.

Held by the Supreme Court of Canada that as the existence of the contract was one of the elements bearing on the decision of the question of substantial similarity in circumstances, the Board should have admitted the agreement.

In Canadian National Railways v. Montreal Tramways, 33 C.R.C. 32 the Board in distributing the cost of additional protection at Guy Street gave effect to an agreement between the parties made many years before and imposed the whole cost on the Canadian National Railways.

In re Ottawa Electric Railway Company v. Canadian National and Canadian Pacific Railway Companies, 38 C.R.C. 125. This was a case of the reconstruction of the Somerset Street bridge, in the city of Ottawa, which carries Somerset street and the tracks of the Ottawa Electric Railway over the tracks of the Canadian National and Canadian Pacific Railways.

On the hearing respecting the apportionment of costs, agreements between the Ottawa Electric Railway Company and the respective railways were put in evidence. By these agreements the Electric Company agreed to indemnify the railway companies from all liability "to maintain, alter, repair or reconstruct the said bridge."

The Board gave effect to the agreement and imposed the whole costs on the city of Ottawa and the Ottawa Electric Railway Company.

This judgment was upheld by the Supreme Court of Canada.

In the above cases no question was raised as to the validity of the agreements. The only case I have been able to find in which the agreement relied on was attacked is *Remy v. Lake Erie and Northern Railway Co.*, 20 C.R.C. 207. In this case an order was made authorizing the company to construct its railway across Henry avenue, in the city of Brantford. Remy claimed damages to his property occasioned by the construction of a railway embankment in front of it. The railway company filed a deed containing a release from Remy for all damages. Remy replied that the release was obtained by misrepresentation and fraud.

DRAYTON, C.C., held that the issue was one for the regular courts.

I think there can be no question about the correctness of this ruling.

In City of Toronto v. Grand Trunk Ry. Co. and Canadian Pacific Ry. Co., 4, C.R.C. 62,

BLAIR, C.C., at p. 67, said:—

“The object of Parliament in constituting this Board was to create a tribunal which should, among other things, insist upon due measures being taken to safeguard the railways in operating their lines, and the public in using the same and in crossing the railway tracks.

“That may be said to be the limit to which the duty of the commission in this direction extends. The Board can have no object, nor would it be justified, in refusing to allow the railway companies and other corporate bodies concerned in any given case, to settle and adjust between themselves, if they prefer to do so, the share each shall bear of the cost of any work that the Board considers necessary and sufficient to ensure public protection, though at the same time it may be added that the Board’s jurisdiction to cover by an order all the terms and conditions governing the erection and maintenance of works of the kind mentioned, or even to change or vary them in disregard of any agreement between the parties, cannot be questioned.

“It may be observed that it is one thing to have the power and another thing to exercise it. We as a Board have approved and endeavoured to continue the course which the Railway Committee of the Privy Council have at all events latterly pursued, of encouraging railway companies or other corporate bodies concerned to arrive at a mutual understanding among themselves as to defraying the expenses incident to any order the Board might make, and as to any and all matters which did not involve the safety of the public or the sacrifice of public interests.”

Again at p. 69:—

“This is not, as we have stated, a court for the adjustment of disputes arising out of agreements entered into by parties respecting questions wholly personal to themselves, or at least of a private rather than a public nature; and we must again emphasize the opinion that it is not within our province, in administering the Act which constitutes this Board, to attempt to provide remedies or afford relief in cases in which said relief and said remedies can better be afforded by the ordinary tribunals of the country.”

In *Duthie v. Grand Trunk Railway Co.*, 4 C.R.C. 304, Killam, J., dealing generally with the powers of the Board, at p. 314, said:—

“It is a statutory body, created to carry out the legislation of Parliament dealing with railways and companies operating them. It is not created for the purpose of enforcing the rights or duties which are imposed or created by provincial laws, written or unwritten, or even by any enactments of the Parliament of Canada, except those dealing with the particular subjects of legislation with which the Railway Act deals. To enable the Board to adjudicate upon a matter, the matter must be one as to which the Board is, by some provision of the Railway Act or the Special Act, expressly empowered or directed to act, or it must relate to some violation of the Railway Act or the Special Act, or of some regulation, order or direction made thereunder.”

Again at p. 315:—

“That is, the business of the Board is to enforce the railway legislation of the Dominion Parliament and, for that purpose, to order the performance of some acts and to prohibit others. It was not created to supplant, or even to supplement the Provincial Courts in the exercise of their ordinary jurisdiction, but to exercise an entirely different jurisdiction, though, perhaps, occasionally overlapping that of the provincial courts.”

In *Greenfield Conduit Company v. Hetherington*, 16 C.R.C. 444, the Board held that it had no jurisdiction to determine questions of title to land.

It seems to me that where the validity of an agreement is called into question before the Board, it becomes a matter for the provincial courts, and I think this is so whether its validity depends upon a question of fact or a question of law. I can see many reasons why this should be so. Take the present case—The agreement contains terms other than those relating to the subway. It may be that the validity of this agreement will come up before the Quebec courts at some future date, and we may then have the spectacle of this Board finding one way and the provincial courts the other way. Moreover I cannot think it was ever intended that the time of the Board should be taken up dealing with matters over which the provincial courts undoubtedly have jurisdiction. I think the proper course for the Board to take in this case is to apportion the costs without regard to the agreement, and reserve to the city any rights it may have against the company under the agreement.

Accordingly, Order No. 48691 will be varied by fixing the proportion of the costs payable by the company at ten per cent instead of one-third as previously ordered, and distributing the balance of the costs of a subway sufficient to accommodate two of the six tracks provided for equally between the City of Quebec and the Canadian National Railways.

October 27, 1932.

Commissioner Norris concurred.

LABELLE, DEPUTY CHIEF COMMISSIONER:

Notwithstanding the different points of law raised by the Quebec Railway, Light and Power Company at the rehearing of this case, I do hereby ratify, confirm and uphold the judgment rendered by the Chief Commissioner on the 30th May last, and concurred in by Mr. Commissioner Norris and myself.

The proportion set therein for the contribution of the company to the construction of the subway was based upon an agreement entered into between the city of Quebec and the company, on November 25, 1919, before Joseph Allaire, N.P., under No. 18814 of his repertory and that agreement has never been changed, amended or abrogated.

In my opinion, the novation which the company claims was effected by the construction of an interlocker at the crossing in question, does not exist, nor was it created by the fact that this Board authorized the construction of the interlocker.

The agreement has never been amended or rescinded in such a way as to exempt the company from its obligation to construct the subway and contribute one-third of the cost of its construction.

The authenticity of the agreement has never been contested nor have the obligations and conditions therein contained. Therefore, it makes proof of its contents, according to section 1215 of the Civil Code of the province of Quebec.

By the agreement, the company had the right and privilege of raising its fare tariff, in view of its contribution to the construction of the subway and it was established at the rehearing that the company took advantage of that privilege and raised its fares.

The legality and validity of the agreement cannot be contested except before the judicial courts of the province of Quebec and therefore, in my opinion, the Board must accept it as binding.

I reserve the right of the company to appeal to the courts of the province for any points of law or fact which come within their jurisdiction.

Contrary to the contention of the company, the time of the existence of the agreement is unlimited. The term of five years mentioned therein refers

only to the right of the company to raise its fares, subject to a renewal of that privilege, provided the obligations and conditions are observed.

In consequence, I think the conclusions of the judgment of May 30, 1932, should be upheld, and that the distribution of costs should stand as apportioned by Order No. 48691, of June 1, 1932.

OTTAWA, October 26, 1932.

ORDER No. 49169

In the matter of the Order of the Board No. 45502, dated September 29, 1930, made upon the application of the City of Quebec, and directing the Canadian National Railways to construct a subway under their tracks at Canardièrè Road, in the City of Quebec (Limoilou Ward) and Province of Quebec; and Order No. 48691, dated June 1, 1932, apportioning the cost of constructing and maintaining the said subway, and of the removal of the facilities of the Bell Telephone Company of Canada and the Quebec Railway, Light and Power Company affected by the construction of the subway;

And in the matter of the application on behalf of the said the Quebec Railway, Light and Power Company for a rehearing and review of the said Order No. 48691, dated June 1, 1932, apportioning the cost of constructing and maintaining the said subway.

File No. 29373

THURSDAY, the 27th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, October 24, 1932, in the presence of counsel for the Quebec Railway, Light and Power Company, the City of Quebec, the Bell Telephone Company of Canada, and the Canadian National Railways, and what was alleged; and upon reading the written submissions filed,—

The Board orders:

1. That the cost of constructing the said subway under the tracks of the Canadian National Railways at La Canardièrè road, in the city of Quebec (Limoilou ward) and province of Quebec, be borne and paid as follows, namely: Ten per cent by the Quebec Railway, Light and Power Company and forty-five per cent by the city of Quebec of the cost of a subway sufficient to accommodate two of the six tracts provided for, and the remainder by the Canadian National Railways.

2. That the construction of the pavement and sidewalks up to the standard of the existing pavement and sidewalks form a part of the cost of the whole work, and that the cost thereof be borne and paid ten per cent by the Quebec Railway, Light and Power Company and forty-five per cent by the city of Quebec of the portion of the subway designed to accommodate two of the six tracks provided for, and the remainder by the Canadian National Railways; but that the cost of any improvement over the existing standard be paid wholly by the said city, subject to whatever agreement it may have with the Quebec Railway, Light and Power Company with regard to the said pavement and sidewalks.

3. That the whole cost of maintaining that portion of the said subway designed to accommodate the four additional tracks be borne and paid by the Canadian National Railways; and that the maintenance of the remaining portion of the subway be borne and paid ten per cent by the Quebec Railway, Light and Power Company, forty-five per cent by the Canadian National Railways, and forty-five per cent by the city of Quebec.

4. That the Bell Telephone Company of Canada and the Quebec Railway, Light and Power Company each bear and pay the cost of removing their respective facilities affected by the construction of the said subway: Provided, however, that the Canadian National Railways shall pay to the Bell Telephone Company of Canada the additional cost incurred by the said the Bell Telephone Company of Canada by reason of the construction of the subway to accommodate the four additional tracks.

5. That this order is made without prejudice to any rights the city of Quebec may have against the Quebec Railway, Light and Power Company under the agreement entered into between them on the 25th of November, 1919.

6. That Order No. 48691, dated June 1, 1932, made herein, be rescinded.

C. P. FULLERTON,
Chief Commissioner.

Application of the Traffic Adjustment Bureau, Winnipeg, Man., for a ruling concerning the rate applicable in March, 1930, on a carload shipment of silica sand from Coutts to Calgary, Alberta.

File No. 38427

JUDGMENT

BY THE BOARD:

Application is made for a ruling concerning the rate applicable on a specific shipment of a carload of silica sand, which moved in March, 1930, from the Wedron Silica Company, Wedron, Ill., consigned to the Royal Crown Soap Company, Calgary, Alta.

The shipment reached Canadian territory at Coutts, Alta., and there being no through rate published via that gateway, it was subject to the combination of rates to and from Coutts, and it is only the rate charged from Coutts to Calgary that is in issue. The applicant and the railway company have filed written submissions setting out their position and contentions.

There were three rates published on sand between the points named, namely, a commodity rate of 9 cents per 100 pounds applying on "building sand"; a commodity rate of 12 cents per 100 pounds applying on "moulding sand"; and the normal 10th class rate governed by the Canadian Freight Classification of 24 cents per 100 pounds applying on "sand, N.O.I.B.N.". The rate last named was charged and applicant claims that the moulding sand rate is applicable, contending that "silica sand is commonly used and commonly known as a moulding sand", and the rate applying on moulding sand should apply, irrespective of the ultimate use the sand is put to, or whether it is consigned to a soap company instead of a foundry; further stating: "We contend that this sand, while in transit, does not lose its identity from silica sand or moulding sand."

Silica sand is a sand having a high percentage of pure silica. It may be shipped as mined and is then known as crude silica sand. Generally, however, it is washed, cleaned, drained, or drained and dried, and graded. The dried sand is screened into different grain sizes, which are the basis for differentiation, so far as the consuming trade is concerned. Although a large percentage of it may be shipped for use as moulding sand, it has many other uses. It is also used in the

manufacture of glass, glassware, pottery and chinaware; in the manufacture of silicate of soda and scouring soaps and compounds; as a locomotive and traction sand; for filtration purposes; and for decorative purposes in building construction. The shipment here in question was for use as an abrasive in the manufacture of household cleanser.

In this case the shipment reached the railway company at Coutts described as silica sand. There was nothing to indicate, and no proof has been furnished, that it was, in fact, moulding sand. It was not used as moulding sand, but as an abrasive in the manufacture of household cleanser, and while not considered particularly relevant to the question at issue, in view of the reading of the tariffs, there is no information in the record to show whether or not it was of a grade, or grain size, which is also adapted to use as moulding sand. The commodity rate being specifically restricted to application on moulding sand, the applicant has not proven title to its application with respect to this shipment, and the applicable rating was the class rate as charged.

It appears this was an isolated shipment, the customary route of movement being through Eastern United States gateways, via which there is specific tariff provision for silica sand at the same rate as published on moulding sand. The application does not ask for a direction to establish a reasonable rate for future application; if it did, we would unquestionably find the rate charged unreasonable. However, the Board has no power to make a retroactive alteration in the tariff and order refund of tolls which have been legally charged.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, ONTARIO, October 28, 1932.

ORDER No. 49202

In the matter of the application of the Traffic Adjustment Bureau, of Winnipeg, Manitoba, for a ruling of the Board concerning the rate applicable, in March, 1930, on a carload shipment of silica sand from Coutts to Calgary, Alberta.

File No. 38427

FRIDAY, the 4th day of November, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
F. A. LABELLE, *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the Traffic Adjustment Bureau and the Canadian Pacific Railway Company,—

It is declared that the rate applicable on the said carload shipment of silica sand from Coutts to Calgary, in the province of Alberta, was the rate charged, namely, the 10th class rate, governed by the Canadian Freight Classification, of 24 cents per 100 pounds applying on "sand, N.O.I.B.N."

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Dominion Traffic Association, Toronto, Ontario, for a ruling as to the L.C.L. rating applicable on Heel Burrs in Canadian Freight Classification No. 18. File No. 33365.85.13

JUDGMENT

BY THE BOARD:

The applicant and the Canadian Freight Association have set out their position and contentions in written submissions filed with the Board. We have also been furnished with samples of the article in question. There is no specific provision in the classification for heel burrs. The issue has been raised with respect to a shipment of fifty boxes of heel burrs from Galt, Ont., to Montreal, Que., billed at 3rd class rate; the railway subsequently requested payment of charges at 2nd class rate; and 4th class rate being claimed by applicant.

The Dominion Tack and Nail Company, Galt, Ont., who manufacture the article, state:—

"These heel burrs are actually small washers used in rubber heels to prevent the nail which holds the heel on to the shoe from pulling through the rubber. In other words, they are used for the same purpose as any other ordinary washer would be used.

"We ship these burrs both plain steel and copper plated. As stated above, there is no reason why these heel burrs should be treated any differently than any other iron washer, merely because they are called burrs not washers. As a matter of fact, there is no reason why they should not be called washers, and if we did this they apparently would take the lower rate and we would not be falsifying our bills of lading in any way."

The manufacturer expresses the opinion that these articles should be rated as washers. The applicant, however, maintains that the 4th class rating provided for rivets should apply under classification rule 21 (*re* application to articles not classified, the ratings provided for analogous articles) because "they are sold to be used with rivets." Applicant's reasoning is unsound. The fact that some article is sold to be used with another does not bring it within the provisions of rule 21, as there may be no analogy, the transportation characteristics of the two articles being entirely dissimilar and justifying different ratings. Plough-shares and points are used with ploughs, barrel covers are used with barrels, but they do not take the same ratings, and the classification is replete with such differences. Further, the classification rule of analogy, by its own terms, cannot be invoked here, as if there is no other provision in the classification for the article in question, it is covered and classified by the item boot and shoe findings, N.O.I.B.N. (item 14, page 61).

The Canadian Freight Association submits that heel burrs are not entitled to the rating applicable on washers; that they are used in the shoe trade for attaching rubber heels to leather shoes and are provided for at rating of 1st class by the item boot and shoe findings, N.O.I.B.N., above referred to; further stating that as heel burrs are analogous, in many respects, to eyelets (item 5, page 61) provision would be made in the next supplement to the classification for an additional item under the heading of Boot and Shoe Findings, reading:—

"Heel burrs, in barrels or boxes. 2nd class."

Webster's new International Dictionary describes a burr as "a small washer put on the end of a rivet before it is swaged down." The terms are synonymous.

We, therefore, consider and find that the third class rating provided for iron or steel washers, in barrels or boxes (item 11, page 168), is applicable on heel burrs; that there should be incorporated in the next supplement to the classification, an item, under the heading of Boot and Shoe Findings, reading:—

"Heel Burrs, Iron or Steel, Plain or Brass or
Copper Coated, in barrels or boxes. 3rd class."

A. D. CARTWRIGHT,

Secretary.

ORDER No. 49191

In the matter of the application of the Dominion Traffic Association, of Toronto, Ontario, for a ruling of the Board as to the L.C.L. rating applicable on heel burrs in Canadian Freight Classification No. 18.

File No. 33365.85.13

THURSDAY, the 3rd day of November, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of the Canadian Freight Association,—

It is ordered and declared that the third class rating provided for iron or steel washers, in barrels or boxes (item 11, page 168, Canadian Freight Classification No. 18), is applicable on heel burrs; and that there be incorporated in the next supplement to the classification an item, under the heading of boot and shoe findings, reading:—

“Heel Burrs, Iron or Steel, Plain or Brass or Copper Coated,
in barrels or boxes3rd class.”

C. P. FULLERTON,
Chief Commissioner.

In the matter of the application of the Luscar Collieries Limited, for an Order under section 196 of the Railway Act, granting it leave to work all mines, seams and beds of coal lying under or within forty yards from that portion of the railway which the Canadian National Railways by Order of the Board No. 42530, dated April 29, 1929, as amended by Order No. 44239, dated January 24, 1930, and Order No. 44366, dated February 19, 1930, on the application of the Gebo Coal Company, Limited, was directed to construct, maintain and operate.

File No. 31531.1.2

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

On the 11th day of April, 1931, the Luscar Collieries Limited filed an application for an order under section 196 of the Railway Act granting them leave to work all mines, seams and beds of coal lying under or within forty yards from that portion of the railway which the Canadian National Railways by order of the Board No. 42530, dated April 29, 1929, as amended by subsequent orders, on the application of the Gebo Coal Company, Limited, was directed to construct, which portion of railway I shall refer to as the Gebo spur.

In their application the Luscar Collieries Limited allege that in and by virtue of a certain coal mining lease and an assignment thereof they are entitled to the exclusive licence and authority to win and work certain mines over which the said Gebo spur is constructed.

The defence of the Gebo Coal Company was filed on May 14, 1931, and really amounts to a denial of all allegations alleged in the application.

On September 29, 1932, the Gebo Coal Company filed an amendment to its defence of May 14, 1931.

At the request of the applicants notice was given by the Board to the parties of a sittings of the Board to be held on November 1, 1932, to hear argument on questions of law arising on the pleadings.

The question considered by the Board at the hearing was the effect of paragraph 7 of the amended defence. The impression created by a casual reading of this paragraph is that it raises a question of law which might be a complete answer to the application. On examining this paragraph closely, however, I find that it raises neither a question of law or relevant fact. In effect it alleges that in and by an agreement dated July 1, 1927, the Luscar Collieries Limited granted to the Canadian National Railways, as lessees, for the term of twenty-one years commencing on July 1, 1927, the right to operate Canadian National trains over its colliery yard trackage at Luscar, free of cost to the railway, and whether such operation was for the service of the Luscar Collieries Limited or the said Canadian National Railways, or any person or company upon the terms in said agreement set forth, and that such agreement of July 1, 1927, did provide that the lessees therein "might make such extension or enlargement or improvements upon, alterations and changes in, and additions to the demised premises as the Canadian National Railways might deem proper, etc." and concludes "and this respondent under the order or orders of the Board is entitled to enjoy all the running rights, privileges, facilities and conveniences contemplated by the said agreement and is entitled to all the benefits and terms thereof".

There is no allegation in this paragraph that the agreement alleged in any way relates to the spur in respect of which the application of the Luscar Collieries Limited is made. Without alleging that the Gebo spur forms a part of the demised premises referred to in the agreement, the plea is worthless and on a proper application under strict procedure should be struck out as frivolous and vexatious and disclosing no reasonable answer. However, as, in my view, it raises no question of law, the decision of which might do away with the necessity for a hearing, no order is necessary.

November 2, 1932.

The Assistant Chief Commissioner concurred.

Application of the Canadian Freight Association for approval of proposed supplement to Canadian Freight Classification No. 18, amending the carload rating on bulk apples.

(File No. 33365.85.9)

BY THE BOARD:

The proposed supplement was submitted for approval on June 15, 1931. Notice was duly published in the *Canada Gazette* as required under section 322 of the Railway Act and the Board's General Order No. 271. Proof copy of the proposed supplement, together with copy of notice of publication in the *Canada Gazette*, was mailed by the applicant to the parties stipulated by General Orders Nos. 271, 348, 353, 469 and 471, with request that their objections, if any, be filed with the Board within thirty days.

The supplement contains but one change, which is with respect to the carload rating on bulk apples. The present rating is 8th class as compared with 5th class when they are shipped in packages. It is proposed that the 5th class rating should apply on apples shipped either in packages or in bulk, except that it is proposed to continue an 8th class rating restricted to apply only on culls and windfalls consigned to canning factories, evaporators or cider mills.

Many submissions were filed with the Board extending over the period from June 24 to November 24, 1931, copies of which were furnished the applicant. On January 7, 1932, the applicant forwarded its submission in reply to all the objections which had been filed with the Board, copies of which were sent to

all the parties who had addressed the Board in this matter. There were subsequent submissions filed by some parties in Western Canada together with request that they be given an opportunity to be heard at public sittings of the Board before the question was disposed of and the matter was, consequently, set down for hearing and spoken to at Vernon, B.C., June 15 and 16, at Calgary, Alta., June 18, and Regina, Sask., June 20.

In submitting the proposed supplement, the applicant stated that the 8th class rating on bulk apples, established a great many years ago, was intended to apply only on so-called windfall apples consigned to canning factories, evaporators, or cider mills, but it has recently developed that there has been considerable movement of first class hand picked apples in bulk under the current item in the classification and the carriers consider that no lower rating should apply on such apples shipped in bulk than on the same article when in packages. The present classification provision for bulk apples being without any qualification as now worded, there is no question as to the 8th class rating being applicable on all kinds of apples shipped in bulk.

While the provisions of the Canadian Freight Classification apply throughout Canada, the objections made to the proposed supplement all relate to the transportation of apples from British Columbia points of origin to prairie destinations and there are no complaints against the proposed amendment so far as apple movements in other sections of Canada are concerned. Submissions to the effect that they had no objections to offer to the proposed supplement were received from the Toronto Board of Trade, Montreal Board of Trade, Canadian Manufacturers Association, Early Fruit, Saskatoon, Northern Fruit Wholesale, Saskatoon, Crown Fruit, North Battleford, Nash-Simington Company, Limited, Kerrobert, Prince Albert Fruit Company, Prince Albert, Brown Fruit, Edmonton, The Moose Grocery, National Fruit Company, Limited, Rex Fruit Wholesale, Western Grocers, Moose Jaw, Sask. At the Calgary hearing a later letter from the National Fruit Company, Limited, Moose Jaw, above named, was filed, modifying their previous approval and suggesting a continuance of the present rating on bulk apples and a reduction in the rates on boxed apples.

A resolution from the Board of Trade, Vernon, B.C., supported by the Board of Trade of Kamloops, B.C., reads as follows:—

“That the Board of Railway Commissioners be asked to adjust the rate on boxed apples, making it the same as that on bulk, viz. 8th class.

“We would respectfully call their attention to a recent widening of the application of the rate on bulk apples to be shipped under the 8th class, while this same apple, in boxes, takes the 5th class rate. This interpretation is, to our mind, an application which was not originally intended, and brings about a rate structure which is decidedly unfair.

“This interpretation and application amounts to penalizing the proper packing of fruit, and is not in the interest of either the consumer or producer.

“We would point out that the box apple business is the mainstay of the fruit industry, and that it is through this that the world-wide reputation of Okanagan apples has been secured. To impair this will be to ruin the work of more than a quarter of a century.”

The British Columbia Farmers' Institutes, Boswell, B.C., stated there should be an equalizing of the freight rates on bulk and boxed apples, but suggest that in accomplishing this there should be a reduction in the rates on apples shipped in boxes.

In so far as the above mentioned submissions go beyond agreement that both bulk and boxed apples should take the same rates, and relate to a reduc-

tion in the current commodity rates on boxed apples, this is, as referred to later herein, outside the scope of the application here before the Board for consideration.

With regard to the various written submissions objecting to the proposed amendment, the objection contained in practically all of them may be very briefly summarized as follows: In view of the economic conditions at present being experienced, both by the prairie consumer and the British Columbia producer, the time is inopportune to approve any change in the classification which will result in an increase in rates; that the present rates on bulk apples are of benefit to both producer and consumer, as with the elimination of the packing charge connected with the shipment of boxed apples the grower is able to obtain a greater return for his apples and the consumer is able to purchase same at a cheaper price for apples in bulk than when shipped in boxes.

The Canadian Horticultural Council, whose membership includes all the provincial fruit growers' associations in Canada, the principal shippers and shipping groups, Western Canada Fruit Jobbers' Association and the Eastern Canada Fruit and Vegetable Jobbers' Association, wrote the Board on July 13, 1931, stating it viewed with grave concern the proposal of the railways to raise the classification of apples in bulk for fresh consumption to the same rating as apples on apples in packages; further stating:—

"The Markets Committee of this Council has recommended that it be a subject for discussion at the annual meetings of the Provincial Fruit Growers' Associations this winter, and to culminate in a general discussion at the annual meeting, thereafter, of the Council, how bulk shipping affects the producer and the consumer, and to arrive at a general policy therein."

Following the reply filed by applicant dated January 7, 1932, the Canadian Horticultural Council wrote the Board on January 16, requesting that no decision be made in the matter until the fruit industry had an opportunity of presenting a nationally considered viewpoint before the Board during the early part of March. By further letter dated March 15, 1932, the Council stated that the British Columbia delegates to the Annual Meeting had definite instructions from the Annual Meeting of the British Columbia Fruit Growers' Association to resist the railways' application "unless the rates on apples in packages are to be compensated to the proposal increase in rates on apples in bulk"; that, accordingly, conferences had been held with the railways to see if a mutually satisfactory compromise could be reached, but without resulting in any agreement. They stated the circumstances were found to be widely different in Western and Eastern Canada and, consequently, they were unable to advance a "Dominion-wide viewpoint resolved from the council's discussions," and the Board should be "expected to be appreciative of our inability to present a fully reconciled viewpoint in behalf of Eastern and Western Canada."

In a letter dated July 9, 1931, Mr. L. J. Ladner, K.C., representing the Attorney General of British Columbia and others, in objection to the proposed amendment contended, amongst other things, that:—

"The proposed change is now the subject matter in part of an appeal to His Excellency the Governor in Council by the Attorneys General of the Provinces of British Columbia, Alberta and Saskatchewan, from the judgment of the Board of Railway Commissioners dated August 26, 1927, being General Order No. 448, and accordingly is subjudice, and the Board of Railway Commissioners for Canada should not, therefore, hear the present application until a decision or disposition is made of the same by His Excellency the Governor in Council."

further stating:—

" but if your Board, in the face of this contention, is determined to proceed with the hearing and disposition of this application, then the Associated Growers of British Columbia, Limited, supported by the Minister of Railways through the Attorney General of that Province, desires, and will at the hearing apply for, the privilege of making application,—

- (a) For a decreased rate by a reclassification or otherwise of apples in boxes;
- (b) For placing in class (8) bulk apples shipped unpacked in containers without tops from the points in question to the Prairie Provinces."

This phase of the question was spoken to at the hearing in Vernon. With respect to the enlargement of this case—which is solely an application of the railways to change the classification rating on bulk apples for uniform application throughout Canada—to embrace an application for a reduction in the current commodity rates on boxed apples from British Columbia points to prairie destinations, the Board ruled that it would not deal with the rates on boxed apples for the reason set out by Mr. Ladner, namely, that the matter is sub-judice; and also because it saw no grounds justifying a reopening of its decision in that case at the present time.

So far as relates to the classification rating on bulk apples being also sub-judice as part of the appeal before the Governor in Council, argument on this point was made by Mr. Ladner, also Mr. McMullen representing the railways. Mr. Ladner argued that bulk apple rates were included in the application dealt with in the Board's Judgment in the General Freight Rates Investigation and quoted the closing portion thereof, reading: "The general basis of fruit rates from the Okanagan should not at the present be disturbed." The record in that case has been carefully examined and it shows that there was not a single reference therein, or rate in any of the exhibits filed, that dealt with bulk apple rates. Certainly the Board did not then have before it, or take out any figures, or give any consideration to the rates on bulk apples or the classification rating thereon. Up to that time the movement of bulk apples had been comparatively small; this movement in large volume only commenced three years later. Obviously, the Board's judgment in that case referred only to the rates before it on the application then being considered and which, so far as apples are concerned, related solely to the commodity rates on boxed apples. Further, what was then in issue was commodity rates lower than the regular class rates and there was no question of classification involved. If the appeal to the Governor in Council were determined and allowed, the question of the classification of bulk apples as compared with boxed apples would be in exactly the same position as it is on this present application, indicating clearly that the matter here before the Board is altogether independent of the matter that is on appeal. This application for amendment to the classification is not sub-judice.

Comment herein will be omitted concerning a considerable portion of the evidence and argument of those opposing the application for the reason that it related solely to the matter of a reduction in the rates on boxed apples, which is not being here considered for the reasons already outlined above, and because it is irrelevant to, and does not have a bearing on, the merits of this application.

As already stated, the classification provision, as now worded, is clearly applicable on all kinds of apples shipped in bulk. The carriers contend it was only intended to apply on windfall or cull apples consigned to canning factories, evaporators, or cider mills. Those opposing the proposed change take issue with this and submit that the present rating must have been considered fair

and reasonable for commercial fruit based on conditions existing in Eastern Canada. Having been established in 1884, at which time apples were not being shipped from British Columbia to prairie points, it obviously was not based on conditions then existing in that province. In support of their submission, parties opposing this application referred to various special commodity tariff items naming, from and to certain specified points, rates lower than 8th class on cull apples shipped in bulk for canning and reshipment. The railways, however, point out that there is a large movement in Eastern Canada, particularly in Ontario and Quebec, of windfall and cull apples in bulk to canning companies at 8th class rates. The classification provision for bulk apples has been before the Board on only one occasion and did not relate to the question here in issue, having reference only to shipments for canning and reshipment moving at the 8th class rates (Application of Dominion Cannery, Limited, Hamilton, Ont., *re* rates on apples shipped in crates commonly known as bushel boxes, Volume 13, Board's Judgments, Orders, Regulations and Rulings, page 296). The following extracts from the Board's Judgment are informative:—

"Apples moving in bulk at 8th class have a minimum weight of 30,000 pounds. For a long period of time, apples moving in bulk have been given 8th class rating. It was stated, on behalf of the railways, that this arrangement as to bulk apples was put in some forty years ago, and was at the time concerned with the moving of low grade apples for the manufacture of cider, the canning industry not then being in existence. With the development of the canning industry, apples were moved in bulk on 8th class rating. About 90 per cent of the apples used by the canning companies represented by the applicant moved in bulk during 1923. A year ago, the applicant company took up the question of the shipping of apples for canning purposes, in boxes or crates; and it stated that during 1923 about 10 per cent of the apples shipped for canning purposes moved in boxes and crates.

"From the evidence, the only other use generally made of the movement in bulk is concerned with the manufacture of apples for cider-making. There have been a few movements of eating apples moving in bulk; the cars in these cases were divided into compartments by means of bulkheading, and the apples were sold direct from the car. It is understood that under the regulations now in force sale of this kind direct from the car standing on the tracks is not permitted.

"It may be said, then, that the great bulk of the apples moving in bulk rating of 8th class are being shipped for canning purposes.

"The apples in question are low grade and are valued at from one-half cent to three-quarter cent per pound. These apples are not hand-picked, but are wind-falls or shaken from the trees.

"The application made is to establish commodity rates on fresh apples when shipped in crates commonly known as "bushel boxes" from various points on the Canadian National Railways in Ontario to Aylmer, Brighton, Simcoe, Strathroy and Forest for further manufacture and reshipment, on the carload basis of 8th class."

"The Board has recognized that there is an obvious anomaly in charging different rates upon the same commodity moving under the same general conditions, the only reason for the difference being the final use.

Manitoba Dairymen's Assn. vs. Dominion and Canadian Northern Express Cos., 14 Can. Ry. Cas., 142 at pp. 143, 149.

See also *Hay & Still Mfg. Co. vs. G.T. & C.P.R. Cos.*, 21 Can. Ry. Cas. 43.

Western Retail Lumbermen's Assn. vs. C.P.R. et al, 20 Can. Ry. Cas., 155, at p. 156.'

"In the present instance, however, while what is concerned is the movement of apples, the apples referred to are differentiated in respect of value, quality and use. The apples moving 5th class are for eating and are of a higher value. The apples moving under 8th class are of low value, are not hand-picked, and are either wind-falls or shaken from the trees; and, again, their use is for a specific purpose."

The situation before us on this record is that there has been a small movement of eating apples in bulk, but the carriers did not raise any question concerning it until when, about three years ago, a very heavy movement in this shipping condition developed from British Columbia points to prairie destinations, hence this application, which now brings before the Board for the first time, the question of the classification rating which should reasonably apply on such traffic from the standpoint of those principles which govern the fixation of classification ratings.

There is a clear line of demarcation between bulk apples, consisting of windfalls and culls for canning, etc., and reshipment, as compared with hand-picked eating apples. As stated in the judgment above cited, "the apples referred to are differentiated in respect of value, quality and use." In the one case, the carrier receives a subsequent haul on the finished product which is not obtained on the eating apples.

The bulk shipments here under consideration consist of apples of the same kind and quality and for the same use as those which are also shipped in boxes. The bulk apples are not graded at the point of shipment, while the boxed apples are, the grades being extra fancy, fancy, Cee grade and household, each grade commanding a different price. The point here, however, is that it is the same kind of apples which is being dealt with, some shipped in bulk, others in boxes. It is true there is a difference in value between the bulk and boxed eating apples, but such difference arises, not from the quality of the apple, but owing to the added cost which the grading, wrapping and boxing involves.

The handling of these apples in bulk differs materially from the usual meaning and method of shipment of commodities in bulk. Ordinarily, when a commodity is loaded in cars for shipment in bulk it is not in any way specially protected or loaded, except for necessary protection at the doorway. When these apples are loaded, the car is divided by partitions into bins—usually six—and in each bin there is additional protection in the form of hay or straw on the car floor as a cushion, the bins are also lined with heavy paper and, in some cases, different kinds of apples are loaded in the same bin, being separated by paper. It is clear from the record that without this protection, the apples would not reach destination without a great deal of bruising and, probably, could not be marketed at all unless so protected for shipment.

With regard to the method of packing for shipment, as briefly described above, representations were made by parties interested in the manufacture of boxes and paper fruit wraps. They claimed such method of packing does not conform with the proper definition of "bulk" shipment; that it is a direct discrimination against apples shipped in boxes; that bulk apples packed in the manner described are, in reality, in large containers—"a glorified box" as described by one witness; and they contend that the same rating should properly apply on both the boxed and bulk condition of shipment as described.

A great deal of evidence was put in dealing with the condition of the British Columbia apple producer, and showing that he is suffering from the economic disturbance of the last three years, which has resulted in a general depression and low prices for his product. Similar evidence could be given to-day by almost every industry or producer and the situation in which the railway companies find themselves as a result of the same condition is well

known. The limitations of the Board with regard to such conditions have been repeatedly stated and are summarized in the following extract from its Judgment concerning application of the Saskatchewan Dairy Association, *re* rates on butter (Volume 15, Board's Judgments, Orders, Regulations and Rulings, p. 202):—

"With reference to Mr. Maclean's argument in the closing portion of the submission of September 16, which is, in substance, that the application for a reduction in the rating on butter is, to some extent at least, based on the premise that there is necessity for assistance to the dairying industry of the province of Saskatchewan, it may be pointed out that this is not an argument that can very well be given weight in considering a classification rating. This appeal is based on grounds that are beyond the powers of this Board. Appeals of this character are still made to the Board, although the Board has very clearly set out on numerous occasions the situation in this respect under the provisions of the Railway Act. For example, in the Board's Judgment in the matter of the National Dairy Council of Canada *re* rate on butter, Western Canada to Vancouver and Montreal, it was stated:—

"Counsel submitted that having in mind the 'necessity of developing mixed farming in Alberta' the rates were excessive. That is to say, the need of diversifying agricultural production was to be taken as a criterion of what the rate should be.

"At page 1680 of the evidence, counsel made an argument in this respect, from the standpoint of public policy, as to the necessity of stimulating milk production. At the same time, he frankly stated in this connection, 'Of course, this is an argument that should be made more to the railways than to the Board.'

"The method of presentation involved in this phase of the matter is not unusual, and on this account a word of comment making clear the nature of the jurisdiction of the Board is justifiable. The Board is given power to deal, *inter alia*, with the reasonableness of the rates. It is nowhere authorized by Parliament to be an arbiter of industrial policy. Opinions may differ as to different lines of development, but the Board's functions in approaching a rate situation are concerned with ascertaining the reasonableness of the rate, not with applying to a rate situation a preconceived opinion as to what type or method of industry should be helped by a modification of the rate.

"In other words, while members of the Board may and do, as Canadians, sympathize with policies of economic development which may through increasing diversity lead to greater economic solidarity, it is not their general opinions but the powers conferred on them by the Railway Act which determines what they can do. Very wide powers, it is true, are given under the Railway Act; but the Railway Act is not to be construed as if it were a blank cheque to be filled in as members of the Board see fit. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates either on complaint or of its own motion."

In so far as the submissions made involve the proposition that rates should bear a relationship to the fluctuations in the price of commodities, this is a contention that has been before us in other cases and the Board's position on this point can be summarized by the following citation from its judgment in application of the Canadian Sugar Factories, Limited, Raymond, Alta., *re* rates

on sugar beets, Volume No. 22, Board's Judgments, Orders, Regulations and Rulings, page 163, at p. 166:—

"With respect to the contention that rates were fixed in 1921 and 1925 when the commodity had a much greater value than at present and there should be a reduction in rates to correspond with the decreased value of the commodity, it may be pointed out that a similar contention has been before us in other cases and the Board's position on this point can be summarized by the following citation from its Judgment in the General Freight Rates Investigation in connection with the submission of the National Dairy Council of Canada for a reduction in the rates on butter and cheese (Volume 17, Board's Judgments and Orders, page 399):—

"Freight rates fixed to bear a relationship to the fluctuations in the price of commodities would have no permanency, nor would they necessarily have any relation to the cost of service, or other factors that are controlling in the establishment of rates, and this has never been accepted as a valid or proper principle of rate-making. The following excerpt from the Board's judgment in the complaint of the National Dairy Council of Canada on behalf of the Manufacturers' section of the Alberta Dairymen's Association *re* freight rates on butter east and west of Calgary and Edmonton (Vol. XII, Board's Judgments, Orders, Regulations and Rulings, p. 146) is particularly relevant on this point:—

"The application was, in substance, the contention that because the selling price of butter had gone down since the rates were increased the rates should be accordingly reduced.

"The principle of charging what the traffic will bear is one of the factors which has been recognized in connection with rate regulation. At the same time, it has not been accepted as the only factor. If a reduction in the price of a commodity is to automatically bring with it a reduction in the rate, it would logically follow that an increase in the price of a commodity would automatically carry with it an increase in the rate. This principle has not been accepted by the Board as valid. The mere ability of an article to pay, aside from the the question of whether the increase in revenue to be derived from the increased rate is justifiably necessary, is not a conclusive justification for an increase in rate. In the increase in rates which Canada has had to face, the increase in rates was not made at the same time as prices went up. A considerable period of time elapsed before the rates were increased, and the justification for the increase was the increased cost to which the railways were subjected."

"Giving force to such contention would involve a reduction in practically all the present freight rates, as what commodity has not suffered a decrease in value under the economic disturbance of the last three years. The situation in which the railway companies find themselves as a result of the same condition is well known. Aside from every other consideration, such a principle of rate making would be impracticable, as the prices of some commodities fluctuate daily."

To cover other points that were made it may be stated that the Board has held "that while the fact that a classification has long existed is persuasive of its reasonableness, at the same time there might be a change in conditions under which the Board would decide that there should be a change in classification rating". (Volume 15, Board's Judgments and Orders, page 214.)

As already stated, the Board has never previously been called upon to consider the propriety, or reasonableness of the classification rating here in issue and the matter is now for the first time before us for consideration. In dealing with the ratings on millinery in the Express Classification (Volume 21, Board's Judgments and Orders, page 29) the Board authorized a change in classification of some twenty years existence, stating at page 33:—

"The only argument advanced by many of those opposing the application is that it will result in a substantial increase in their charges, with no evidence submitted bearing on the merits of the proposed rating from any other standpoint. The reasonableness of a classification rating on any given article cannot be determined merely by a showing of the effect in increased revenue accruing to the carriers thereby."

and also at page 35:—

"From the foregoing, it will be seen that the provision for the articles here in question, when shipped in crates, at a rating appreciably lower than applicable on the same goods shipped in cartons, is an exception and contrary to the general provision governing in both freight and express movements."

In re Canadian Freight Classification No. 17 (Volume 15, Board's Judgments, Orders, Regulations and Rulings, page 177) the Board authorized (page 237) an increase in the carload rating on empty tin cans, loose, which had been in existence for approximately forty years; also on wooden boxes and baskets (pages 193-5) the carload rating in force for some forty years was authorized to be increased. In these, and the many other cases, the Board has been governed in its decision by consideration of whether, in relation to other ratings in the classification and the factors considered in approving classification ratings, what was proposed was proper and reasonable. The position of the Board is the same as that of the Interstate Commerce Commission, who have stated "classification and rates and revenue should be kept entirely separate." If a classification rating is found to be too high, it is ordered reduced without regard to rates or revenue. The classification applies uniformly throughout Canada whereas the rates themselves vary according to the territorial application.

All through the record it is urged that the reduced purchasing power of the prairie consumer makes it necessary that he should be able to obtain apples in bulk at a lower price than obtains on boxed apples; that his ability to do so will be materially affected if the proposed change in classification is made; and some witnesses went so far as to contend that the proposed change in classification would result in the elimination of bulk shipments. It would, therefore, seem fitting to analyze, in this respect, some of the figures filed by the various parties.

The Saskatoon Board of Trade submitted figures showing the cost of laying down bulk and boxed apples in Saskatoon to be as follows:—

JONATHAN CEE

40 POUND BOX OF APPLES

Cost in British Columbia.. . . .	\$ 1 20 per box
Freight on 50 pounds at \$1.13 per 100 pounds.. . . .	57 per box
Laid down in Saskatoon.. . . .	\$ 1 77 per box

BULK APPLES

Cost in British Columbia per ton \$35—equal per 100 pounds to	\$1 75
Freight on 100 pounds at.. . . .	74
Laid down in Saskatoon.. . . .	\$2 49

The boxed apple figures are computed on gross weight of 50 pounds per box containing 40 pounds net of apples, so that two and one-half boxes equal 100 pounds net of apples, making the cost of 100 pounds of apples in boxes \$4.43 as compared with \$2.49 for 100 pounds of bulk apples. The proposed change would result in a laid down cost on the bulk apples of \$2.88 per 100 pounds, made up of \$1.75 as the cost in British Columbia and freight rate of \$1.13. These figures show the laid down cost in Saskatoon of the boxed apples to be 4.43 cents per pound and the bulk apples 2.49 cents per pound, which latter figure would be 2.88 cents under the proposed change. In other words, the figures submitted here show that the laid down cost of bulk apples is 56 per cent of the cost of boxed apples under the present rate, and, under the proposed change, would be 65 per cent.

Some receivers of bulk apples from British Columbia put them up in crates or boxes at destination, which have the same appearance as the household grade shipped in boxes or crates from British Columbia. Those boxed at destination, however, are not so compactly packed, containing, approximately 36 pounds net as compared with approximately 40 pounds when packed in British Columbia. Witness representing the T. Eaton Company, Calgary, gave the following cost figures (p. 2052):—

"The cost per crate of apples shipped in bulk at a cost of \$25 per ton f.o.b. Vernon is as follows:—

	Cents
Apples..	45.45
Crate..	15.00
Handling charges..	3.00
Freight..	16.92
Cartage..	2.00
	<hr/>
	82.37 "

Under the proposed change, these figures would be:—

	Cents
Apples..	45.45
Crate..	15.00
Handling charges..	3.00
Freight..	25.56
Cartage..	2.00
	<hr/>
	91.01

This witness stated that the bulk apples boxed at Calgary were sold in 1931 at from 79 cents to \$1 per box, the average price being 89 cents; that household grade apples packed in British Columbia were sold at from \$1.25 to \$1.35 per box. The grade last named is the cheapest of the four grades packed in British Columbia, so that, obviously, the selling price of the three higher grades would be considerably higher, although figures were not given. The proposed change would make a difference in cost of 8.64 cents per box on the apples packed at destination and, it will be noted, would enable a selling price thereon much below that obtaining, on an average, for the boxed apples from British Columbia. Exhibit No. 24, filed by a representative of the Consolidated Fruit Company, Limited, Calgary, shows the cost of bulk apples boxed at destination as 64 cents per box, which is lower than the T. Eaton Company's figures, but the latter are figured on a f.o.b. shipping cost of \$25 per ton, while the other computation is based on \$20 per ton. The Saskatoon Board of Trade figures are based on \$35 per ton. Naturally, differences in f.o.b. cost make a difference in the laid down figures based thereon.

Exhibit No. 22 is the sales sheet of the H. H. Cooper Company, Edmonton, for October 3, 1931, showing their selling prices on that date. Their prices for

apples shipped from British Columbia in bulk, crated at Edmonton, described as "All Household Heavy Pack, Finest Quality", were:—

Wealthys.. . . .	76½	cents	per	crate
McIntosh Reds.. . . .	96	"	"	"
Jonathans.. . . .	96	"	"	"

Their prices, on the same date, for apples shipped from British Columbia in boxes were:—

Wealthy, fancy wrapped.. . . .	\$	1	50	per	box
McIntosh Red, unwrapped, Orchard Run B.C. Pack		1	36	per	crate
McIntosh Red, wrapped, C Grade, 125s to 163s.. . . .		1	75	per	box
McIntosh Red, wrapped, C Grade, 113s and larger.. . . .		1	55	per	box
McIntosh Red, wrapped, fancy, 113s to 163s.. . . .		1	99	per	box
McIntosh Reds, wrapped, fancy, 100s and larger.. . . .		1	75	per	box

In a statement read by the Vice-President of the United Farmers of Alberta, the following appears (p. 2074-5):—

"In 1931 some of our farmer organizations brought in cars of apples from British Columbia. From them we have information that there was a spread in price ranging, according to variety, from 52 cents to 85 cents per 40 pounds as between apples received in bulk and boxes purchased locally."

Where boxing at destination, as above described is not performed, it is assumed the selling price is reduced to this extent, namely, approximately 15 cents per box. It is stated that a large quantity of the bulk apples are taken delivery of direct from the car in boxes, barrels and all sorts of containers. A representative of the National Fruit Company, Regina, stated (p. 2123):—

"We have containers at our warehouse, we sell apples by the hundred pounds. Some jobbers charge for these crates, we make a charge for the container going out and when the merchant returns them he is credited with the full charge. We absorb any loss from wear and tear, it does not cost the merchant anything."

In the evidence given by a representative of Grose and Rowcliffe, Limited, Wholesale Fruit Dealers, Regina, the following discussion took place (p. 2141-2):—

"Q. Do you do your own crating?

"A. We don't do that. We have a box. Last year we got a paper carton from the Morton Paper Co. of Winnipeg, we sent our apples out in that way.

Commissioner Norris:

"Q. The paper cartons you refer to, were they returned to you?

"A. They were in some cases, but we absorbed the cost of them, and in some cases where they cared to return them we allowed them the cost.

"Q. Did it add anything to the cost of the apple to the consumer?

"A. No sir, not in our policy. This year we are putting these paper cartons inside of a 50 pound permanent box. We charge 50 cents so that we are sure of them being returned. The commodity will not stand the price of an expensive container. We reckon if this box is returned and sent out 50 times it will cost 1 cent per 50 pounds. I submit that is a minimum at which anything can be handled."

Witness J. A. Grose, of Grose and Rowcliffe, Limited, Wholesale Fruit Dealers, Regina, gave the following comparison, which, he stated, was representative, car No. 1 consisting of boxed apples and car No. 2 of bulk apples:—

CAR No. 1—BOXED APPLES

25 Boxes, Extra Fancy, \$1.50..	\$ 37 50
215 Boxes, Fancy, Medium Size, \$1.30..	279 50
125 Boxes, Fancy, Large Size, \$1.10..	137 50
80 Boxes, "C", Medium Size, \$1.10..	88 00
150 Boxes, "C", Large Size, 90 cents..	135 00
155 Boxes, Household, 75 cents..	116 25
750..	\$ 793 75
Cost of apples, f.o.b. Kelowna, B.C..	\$ 793 75
Freight charges, 37,500 pounds at \$1.13..	423 75
	\$ 1,217 50

CAR No. 2—BULK APPLES

31,500 pounds of apples at \$30 per ton, f.o.b. Kelowna, B.C..	\$ 472 50
Freight charges, 31,500 pounds at 74 cents..	233 10
Freight charges on Dunnage..	2 59
	\$ 708 19

Witness stated prices shown above for boxed apples were based on last season's opening prices, which were maintained throughout the summer and fall; that the figure shown for bulk apples was the average ruling price last season. He stated that while the shipping weight was not the same, there was the same weight of apples in both cars, the difference representing the weight of the boxes. Witness stated these figures represented the laid down price to the wholesaler at Regina and show a saving effected by shipping a car of apples in bulk of \$509.31, made up as follows:—

Saving on freight on box material..	\$ 67 80
Saving on freight on apples..	120 26
Saving in purchase price..	321 25
Total saving on one car of apples..	\$ 509 31

Under the proposed change in classification, the figures for car No. 2 would be:—

31,500 pounds of apples at \$30 per ton, f.o.b. Kelowna, B.C..	\$ 472 50
Freight charges, 31,500 pounds at \$1.13..	355 95
Freight charges on Dunnage..	3 96
	\$ 832 41

Based on the figures last shown, this makes the saving on the bulk car \$385.09 (instead of the figure of \$509.31), or 51 cents per box as compared with the cost of the 750 boxes in car No. 1. Based on 750 boxes as used by witness, and which is understood to be the standard load for a car of boxed apples, the laid down cost to the Regina wholesaler averaged \$1.62 per box on car No. 1; 94 cents on car No. 2; which would be \$1.11 on the latter under the proposed change. In other words, without any change in the price received by the producer, the cost of the bulk apples would be 68 per cent of that of boxed apples as compared with 58 per cent under the present rate. In the result, these figures are very close to those given by the Saskatoon Board of Trade, as above set out, namely, 65 per cent and 56 per cent respectively.

Adverting, now, to the merits of the application, and applying the test of the appropriate basic classification elements, we find as follows:—

Character, Use and Value of Commodity.—The bulk apples here under consideration are of the same kind and quality, and used for the same purpose, as those which are also shipped in boxes. The bulk apples are not sorted into grades before shipment, except that the culls are taken out; the boxed apples are graded, as hereinbefore described, each grade commanding a different price.

The value of bulk apples, f.o.b. shipping point, is given as ranging from \$20 to \$35 per ton; for boxed apples from \$60 to \$80, and for some of the higher grades, up to \$100 per ton. The grading, wrapping, boxing, brokerage and other incidental charges attaching to the boxed apple movement result in the difference in value. Before reaching the consumer, many of the apples shipped in bulk are boxed at destination, so that the packing charge is incurred there instead of at shipping point, although the destination cost is shown as much less than at point of origin. The spread in value here is no greater than exists with respect to a great many articles. There being a very limited number of classes in the classification, the grouping of articles is, necessarily, more or less broad, and there has never, in Canada or the United States, been that attempt at refinement that would provide for different ratings on the same article based solely on difference in value. In application of the Montreal Board of Trade *re* classification of flannelette sheets (Volume 3, Board's Judgments, Orders and Rulings, page 93) the Board stated:—

"Refinement of classification is impossible with the limited number of merchandise classes, and goods have therefore to be broadly grouped. Mr. Dodd stated that woollen blankets ran from \$3 to \$25 a pair; yet they are grouped in one class, viz: 1st. The cheap hat or tweed cap is in the same class with silk hats; and so on with other lines of dry goods, boots and shoes, etc. The presumption is strong that if this application were granted the door would be open to others. The shoddy, or 'union,' blanket is intermediate in price between the flannelette (or cotton blanket) and the woollen blanket, and the price is not far below that of the cheaper grade of the latter."

In application of the Wallaceburg Cut Glass Works *re* classification of cut glass ware (Volume 8, Board's Judgments, Orders and Rulings, at page 7), the Board stated:—

"A good deal of difficulty would arise if the Board attempted to differentiate between cut glass moving L.C.L., which is of a high value, and the cut glass of the applicant company. It is not intended that the deep-cut luxurious article, handled by jewellers, should be given any reduction in its present double-first-class rating.

"The Board, in 1911, File 15628, decided that there should be no reduction in rating on cut glass, L.C.L. There is nothing before us which would warrant any review or change in that decision. It seems to me it would be a mistake for us to have two L.C.L. rates on cut glass, which would be governed only by the value of the article. This would lead to confusion and perhaps deception. It would be quite impossible for a railway company to open L.C.L. shipments of cut glass to have the commodity valued to determine its rating.

"In 25 I.C.C., 474, the Interstate Commerce Commission said:—

'No classification can be so minute as to conform to the different varieties and conditions of traffic. To separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification.'

"I think we should decide that cut glass is cut glass and two ratings on that commodity, L.C.L., would not be practicable."

In the matter of the classification of "Health Salt," (Volume 6, Board's Judgments, Orders and Rulings, at page 444) the judgment of the Board states:—

"The grouping of articles must, of necessity, be more or less broad; hence a hat is a hat, silk is silk and tea is tea, no matter how the values may vary."

The judgment of the Board in the application of the Marshall Ventilated Mattress Company, Limited, for a reduction in the classification ratings on mattresses, is also pertinent here (Volume 18, Board's Judgments, Orders and Rulings, page 474).

Risk Attached to Carriage.—Very little was said on this point. We do not believe there is sufficient difference under this heading, in the handling of bulk versus boxed apples, to be a controlling factor in the fixation of the classification rating. The railway companies contend that the boxed apple offers much greater protection in its safe transportation without damage; that in the case of a car becoming disabled, the boxed apples can be transferred without damage, but it would be impossible to transfer a car of bulk apples without damage. In dealing with the question of boxed versus bulk apples, the Interstate Commerce Commission, in 74 I.C.C., p. 668, stated:—

“From a transportation standpoint boxed apples are more desirable traffic, especially on long hauls. They can be better protected from heat in summer and cold in winter, because a freer circulation of air is permitted; liability to damage from crushing is less; and the opportunity for pilferage is not so great.”

Facilities and Equipment Required.—The record shows that there is no difference between bulk and boxed apples with respect to the facilities and equipment required to be furnished by the carriers for their transportation.

Bulk and Weight.—Any difference existing between boxed and bulk apples under this heading is in favour of the boxed apples, as the latter can be, and are, loaded to a greater weight per car than the bulk apples. Calculating at the same rate for both conditions of shipment, as the application contemplates, based on the carload minimum weight published in the tariff, namely, 30,000 pounds on bulk apples and 35,000 pounds on apples in packages (except during period June 1 to September 30 of each year when 30,000 pounds minimum applies), the carrier's revenue per car on bulk apples would be approximately 85 per cent of that obtained for the transportation of boxed apples. A statement was filed showing that during the period from July 1, 1930, to December 31, 1931, the average weight per car on straight carloads of bulk apples was 31,963 pounds; on straight carloads of boxed, or crated, apples, the average weight was 35,594 pounds; and, based on these figures, at equal rates the revenue per car on bulk apples would be approximately 90 per cent of that obtained on the same car when loaded with apples in packages.

Competition.—It has been held that, within proper limitations, competition may be taken into consideration in classifying freight. The Board has stated that “mere comparison of the ratings on one article with another, if there is no competition between them, does not, in itself, justify a change in the classification.” In so far as the element of competition exists in this case, the situation is that the apples shipped in bulk are sold at destination in very active and successful competition with those shipped in boxes at the higher rating, and at a much lower price than can be met by the boxed apple. In many instances, the apples shipped in bulk reach the consumer in the same kind of package as when originally shipped in boxes from British Columbia.

Packing.—Under this head, one of the cardinal principles of classification, both in Canada and the United States, is that the rating on a commodity in a more secure package should not exceed that applicable when shipped in a less secure package (there are a few exceptions, where the difference in rating is based on conditions quite distinct from the matter of packing). With regard to less than carload ratings, the distinction is more finely drawn than in the case of carloads, for example, many articles when shipped L.C.L. in crates take a rating one class higher than when in boxes, while the same carload rating applies

on both these packages. Throughout the classification it will be found provision is made permitting the acceptance of many articles or commodities for carload shipment "loose" or "in bulk", but in no case, except on apples, so far as the Board is aware, is a lower rating given in the classification for the "loose", or "in bulk" shipping condition, than is provided for the same article or commodity when in packages. The saving resulting from escaping the cost of the packages and paying freight charges on the weight of same at the same rate as applicable on the commodity contained therein, is perfectly obvious, and from a transportation standpoint, such a shipment, in many cases, is not as desirable. There was a similar exception to this well established rule and principle of classification in the case of tin cans, which, for a great many years, had been rated 5th class in packages and 6th class when shipped loose in carloads and, when there was a general revision of the classification in 1925, the carriers were authorized to increase the rating for the loose condition of shipment to 5th class, it being there pointed out that this was practically the only item in the classification where the rating was higher for a shipment in a good container (a box) than charged for the same article shipped loose in the car (Volume 15, Board's Judgments, Orders and Rulings, *re* Classification No. 17, carload rating on empty tin cans, page 236).

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The classifications in force in the United States make no distinction in carload rating between apples in packages and in bulk. By tariff provisions, for some movements in the United States, the rating is higher on apples shipped in bulk than when in boxes, barrels, or crates. In 96 I.C.C., 437, there was before the Interstate Commerce Commission, a complaint concerning rates on bulk apples, which were 50 per cent over the rates applicable when in packages. In that case the Commission found that the rates on apples in bulk would, for the future, be unreasonable to the extent that they exceeded the rates on apples in boxes. In 34 I.C.C., at p. 402, the Commission stated:—

"So far as is shown by the record, there are no interstate rates on apples in bulk lower than the corresponding rates on apples in packages."

While, of course, seeking a reduction, not in the classification rating, but in the current commodity rates on boxed apples—the situation concerning which has already been set out herein—some of the submissions of those opposing the application appear to recognize the propriety of the same rating on apples in bulk and in packages. The resolution of the Vernon Board of Trade, supported by the Kamloops Board of Trade, calls attention "to a recent widening of the application of the rate on bulk apples to be shipped under the 8th class, while this same apple in boxes takes the 5th class rate." It then states:—

"This interpretation is, to our minds, an application which was not originally intended and brings about a rate structure which is decidedly unfair. This interpretation and application amounts to penalizing the proper packing of fruit and is not in the interest of either consumer or producer."

The British Columbia Farmers' Institutes, Boswell, B.C., referred to "the absolute urgency of equalizing the freight rate upon bulk and boxed apples." The Canadian Horticultural Council, in letter dated March 15, 1932, stated that the British Columbia delegates to their annual meeting, attended with definite instructions "that the railways application is to be resisted unless the rates on apples in packages are to be compensated to the proposal increase in rates on apples in bulk." What the British Columbia delegates submitted to the carriers

was a proposition that commodity rates should be established on boxed apples below those now current, but higher than the 8th class rates on bulk apples, such rates to apply on both boxed and bulk apples.

The above analysis and test of the basic classification elements show clearly that there is no justification for a lower rating in the classification on these apples shipped in bulk than when they are in packages; the proposed amendment to the classification is proper and reasonable and will be approved.

A. D. CARTWRIGHT,

Secretary.

OTTAWA, Ontario, November 2, 1932.

GENERAL ORDER No. 503

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of proposed supplement to Canadian Freight Classification No. 18, amending the carload rating on bulk apples, on file with the Board under file No. 33365.85.9.

WEDNESDAY, the 2nd day of November, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Whereas notice has been given by the Canadian Freight Association in the *Canada Gazette*, as required by section 322 of the Railway Act, and copies of the said supplement furnished to the organizations named in the General Orders of the Board Nos. 271, 348, 353, 469, and 471, with the request that their objections, if any, be filed with the Board within thirty days;

Upon consideration of the said objections; and upon hearing the application at the sittings of the Board held at Vernon, British Columbia, June 15 and 16, 1932; at Calgary, Alberta, June 18, 1932; and at Regina, Saskatchewan, June 20, 1932, in the presence of counsel for and representatives of the Canadian Freight Association, the Canadian National and the Canadian Pacific Railway Companies, the Attorney General of British Columbia, the British Columbia Fruit Growers' Association, the British Columbia Shippers' Council, the Associated Growers of British Columbia, Limited, the Sales Service, Limited, the Independent Growers' Association, the Province of Alberta, the Alberta Tariff Council, the Calgary Board of Trade, and the Province of Saskatchewan, and what was alleged,—

The Board orders: That the said proposed supplement to Canadian Freight Classification No. 18 be, and it is hereby, approved, subject to Item 4 (Note 2) being changed to read: "Applies only on windfalls or culls, consigned to canning factories, evaporators, or cider mills."

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 49170

In the matter of Section 375, Subsection 2, of the Railway Act, and Tariff C.R.C. No. 1 of the Temiskaming and Northern Ontario Railway, covering telephone rates over the Nipissing Central Railway.

File No. 38506

TUESDAY, the 25th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders: That the said Tariff C.R.C. No. 1 of the Temiskaming and Northern Ontario Railway, covering telephone tolls of the Nipissing Central Railway Company, on file with the Board under file No. 38506, be, and it is hereby, approved as of the date of the filing thereof.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49171

In the matter of Section 375, Subsection 2, of the Railway Act, and of the tariffs of the British Columbia Telephone Company, Limited, as on file with the Board at the date hereof.

File No. 32560.11

TUESDAY, the 25th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders: That all tariffs of the British Columbia Telephone Company, Limited, including all supplements, cancellations, revised sheets, and revisions thereto and thereof, filed with the Board at the date of this order, be, and the same are hereby, approved as of the respective dates of the filing thereof.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49172

In the matter of Section 375, Subsection 2, of the Railway Act, and Local Telephone Tariff C.R.C. No. 1 and Official Telephone Distance Table C.R.C. No. 2 of the Algoma Eastern Railway Company, on file with the Board under file No. 38505.

TUESDAY, the 25th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders: That the Algoma Eastern Railway Company's Local Telephone Tariff C.R.C. No. 1 and Official Telephone Distance Table C.R.C. No. 2, on file with the Board under file No. 38505, be, and they are hereby, approved as of the date of the filing thereof.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49173

In the matter of Section 375, Subsection 2, of the Railway Act, and Tariff C.R.C. No. 7 of the Algoma Central and Hudson Bay Railway Company, covering its telephone tolls.

File No. 38504

TUESDAY, the 25th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders: That the said Tariff C.R.C. No. 7 of the Algoma Central and Hudson Bay Railway Company, covering the telephone tolls to be charged by the company, on file with the Board under file No. 38504, be, and it is hereby, approved as of the date of the filing thereof.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49174

In the matter of Section 375, Subsection 2, of the Railway Act, and of the tariffs of the Bonaventure and Gaspé Telephone Company as on file with the Board at the date hereof.

File No. 38503

TUESDAY, the 25th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*F. A. LABELLE, *Deputy Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*

The Board orders: That all tariffs of the Bonaventure and Gaspé Telephone Company, including all supplements, cancellations, revised sheets, and revisions thereto and thereof, filed with the Board at the date of this order, be, and the same are hereby, approved as of the respective dates of the filing thereof.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49167

In the matter of the application of the Canadian National Railways, herein-after called the "Applicants," under Section 276 of the Railway Act, for authority to open for the carriage of traffic the portion of the Gebo Coal Company's spur from its intersection with the Luscar Subdivision of the Grand Trunk Pacific Branch Lines Company at mileage 5·28, in the Southwest Quarter of Section 23, Township 47, Range 24, West 5th Meridian, to the end of the said spur in the Northeast Quarter of Section 28, Township 47, Range 24, West 5th Meridian, a distance of 3·45 miles; also over wye track constructed at the end of the said spur, 0·24 miles in length.

File No. 31531.1.1.

WEDNESDAY, the 26th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

It is Ordered: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of the Gebo Coal Company's spur from its intersection with the Luscar Subdivision of the Grand Trunk Pacific Branch Lines Company at mileage 5·28, in the southwest quarter of section 23, township 47, range 24, west 5th Meridian, to the end of the said spur in the northeast quarter of section 28, township 47, range 24, west 5th Meridian, in the province of Alberta, a distance of 3·45 miles; also over the wye track constructed at the end of the said spur, 0·24 of a mile in length: Provided such operation, if performed by 35 per cent engines, be limited to a rate of speed not exceeding ten miles an hour.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49176

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Dunelm Southwesterly Branch, mileage 0·0 to 25·23.

File No. 37329.18

FRIDAY, the 28th day of October, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Dunelm Southwesterly Branch from mileage 0·0 to 25·23.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR THE MONTH OF AUGUST, 1932

Railway Accidents	175	with 21 persons killed and 164 injured
Railway Accidents at highway crossings.....	22	with 10 persons killed and 28 injured
	197	31
		192
		Killed Injured
Passengers	—	27
Employees	6	100
Others	25	65
	31	192

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NOVA SCOTIA

- 1 Automobile—Ran into side of train. Licence N.S. 65086.
- 1 Automobile—Collided with track motor. Licence N.S. 82-012.
- 1 Auto Truck—Licence N.S. C-16-394.

NEW BRUNSWICK

- 1 Automobile—Excessive speed of auto. Licence N.B. 2928.

QUEBEC

- 1 Automobile—Auto driver failed to stop for crossing. Licence N.S. 87.
- 1 Auto Truck—Truck driver attempted to beat train. Licence Que. F-11805.
- 1 Automobile—Licence Que. 70403.

ONTARIO

- 3 Automobile—Ran into side of train. Ont. licences MS-805; U-1916; 45-137-C.
- 2 Automobile—Ran into electric car. Ont. licences H-5684; Y-7461.
- 1 Automobile—Excessive speed of auto. Ont. licence JL-152.
- 1 Auto Truck—Ran into car being dropped on transfer track. Licence Ont. 51-738-C.
- 1 Auto Truck—Defective brakes on truck. Licence Ont. 26817-C.
- 4 Automobile—Licences Ontario, BL-781; HN-118; 43-609-C; 53-4496.

MANITOBA

- 1 Automobile—Stalled on crossing. Licence Man. 48-379.

SASKATCHEWAN

- 1 Automobile—Licence Sask. 43-195.

BRITISH COLUMBIA

- 1 Pedestrian—

Of the 22 accidents at highway crossings, 17 occurred at Unprotected Crossings and 5 at Protected Crossings. Fifteen (15) of the accidents occurred during the daylight hours and 7 at night.

OTTAWA, October 28, 1932.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, December 1, 1932

No. 20

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Canadian Pacific Railway Company for an amending Order distributing the cost of maintenance of the overhead bridge at Magog, Que., so that the Town of Magog shall bear the cost of maintaining the bridge structure in the same proportion which it contributed to the cost of reconstructing it in 1928, when the Town agreed to pay one-third of such cost.

File 31922.2.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

There is involved in this application the question of maintenance charges of the overhead bridge at Magog, Que., and the further question as to how this maintenance should be divided between the railway and the municipality.

The earlier history of the bridge construction in Magog may be briefly summarized. Under date of October 14, 1890, a petition went forward from the Municipality of Magog to the Chairman of the Railway Committee of the Privy Council setting out, *inter alia*, that the Waterloo and Magog Railway Company and the Atlantic and Northwest Railway Company had made a deep cut through Main street, in the town of Magog, Que.; that the railway company had been repeatedly requested by the corporation to construct a bridge over the said railway's cut; that nothing had been done; and, therefore, the municipality was asking that order issue directing the building of a bridge without delay, so that safety and convenience might be conserved.

Under date of June 1, 1891, the Railway Committee of the Privy Council prepared a report which was approved by His Excellency the Governor General in Council. This directed that an overhead bridge be built, and that the cost of said work was to be borne by the Atlantic and Northwest Railway Company. The report does not show any direction that the municipality should participate in cost.

Under date of July 16, 1928, the Canadian Pacific Railway Company, which had come into the place of the Atlantic and Northwest Railway, applied for authority to reconstruct the bridge in question. Nothing was said in the

application as to distribution of cost. Under date of August 1, 1928, Order No. 41189 issued authorizing reconstruction of the bridge.

In Mr. Flintoft's letter of August 20, 1928, the question of participation in cost of the structure was raised. There was enclosed in said letter of Mr. Flintoft copies of correspondence which had taken place between the secretary-treasurer of the municipality and representatives of the railway. A letter of June 23, 1928, from the secretary-treasurer to the railway company sets out as follows:—

“As to the subscription of the town towards the payment of the work, as verbally proposed to Mr. Beatty, Superintendent of Construction, it will be $33\frac{1}{3}$ per cent including the Government allowance, if any.

“In other words, the Canadian Pacific Railway will pay $66\frac{2}{3}$ per cent of the total cost of the bridge; the town of Magog and the Government, if the latter decides to help in any way will pay $33\frac{1}{3}$ per cent of the total cost of the bridge.”

Another letter dated July 7, 1928, copy of which was supplied by Mr. Flintoft in his letter of August 20, 1928, addressed to Mr. A. Williams, Superintendent of the Canadian Pacific Railway at Farnham, Que., and signed by the secretary-treasurer of the municipality reads as follows:—

“In answer to your letter of July 3, I have been instructed by the council of the town of Magog to tell you that the town will undertake to look after the lighting, the drainage, and the filling of the approaches of the overhead bridge.”

In Mr. Flintoft's letter of August 20, 1928, no question of maintenance of the bridge or distribution of same was raised. He asked, however, for an amendment to Order No. 41189, the following being the specific words setting out the amendment which he asked for:—

“I now wish to apply to the Board for an amendment to Order No. 41189, providing for the deposit by the town with the company of a sum equivalent to one-third of the total cost of the structure, and, in addition, providing that the municipality shall pay for the installation and maintenance of the lighting of the bridge and approaches as well as the drainage and filling of the approaches as agreed by them.”

Before issuing the amended order, the Board being desirous of having no doubt exist as to what was being undertaken by the municipality, asked it to file a resolution covering the terms that had been agreed on. In response to this, the following was filed:—

“Extract of minutes of meeting of the Municipal Council of the Corporation of the Town of Magog, held on October 5, 1928:—

“Submitted a letter from the Board of Railway Commissioners, under date of September 11, 1928, asking the council to pass a resolution authorizing the deposit with the Canadian Pacific Railway of a sum of money equivalent to one-third of the total cost of straightening overhead bridge; the municipality to undertake to pay for the installation and maintenance of the lighting of the bridge and approaches, as well as the drainage and filling of the approaches.

“It was moved by Councillor D. Audet, seconded by Councillor Napoleon Simoneau, that the secretary-treasurer be authorized to send to the Canadian Pacific Railway the sum of \$11,500, being one-third of the amount required for the straightening and building of overhead bridge according to the plans approved by the provincial government. By these presents, the municipality promises to install and maintain the lighting of the bridge and approaches, and to drain and fill the approaches of the

said bridge; the company to begin the construction work as soon as possible, and to continue without interruption until it is completed.
Adopted.

"I, the undersigned, Alfred Tourigny, Secretary-Treasurer of the Corporation of the Town of Magog, certify by these presents that the above resolution is a true extract of the minutes of a meeting of the Municipal Council of the Town of Magog, held on October 4, 1928.

(Signed) ALF. TOURIGNY,
Secretary-Treasurer."

Following this, amended Order No. 41563 of October 10, 1928, issued.

The question of maintenance was not raised until July 26, 1932, when Mr. Flintoft wrote stating that Orders Nos. 41189 and 41563 did not contain any provision concerning the maintenance of the bridge structure itself. It was represented that the railway company was of opinion that the town of Magog should properly bear the cost of maintaining the bridge structure in the same proportion which it contributed to the cost of the reconstructing in 1928, when the town agreed to pay one-third of such cost. Exception to this proposition is strongly taken by the secretary-treasurer of the municipality.

Reference is made by the railway company to the practice of the Board in requiring a municipality to maintain the wearing surface of a highway carried over such a bridge as is herein concerned. The general practice referred to is correctly stated. If the matter of the bridge construction and expenditures incidental thereto had not been the subject of agreement between the municipality and the railway company, and if the municipality had not contributed to the agreed-on items, then the question of the practice of the Board in regard to the wearing surface might be given weight. But it seems to me that the arrangements arrived at in 1928 take the matter out of the ordinary practice, and I am of opinion that the amending order asked for should not issue.

November 8, 1932.

The Chief Commissioner concurred.

ORDER No. 49216

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for an Order amending Order No. 41189, dated August 1, 1928, as amended by Order No. 41563, dated October 10, 1928, by distributing the cost of maintaining the overhead bridge across Main Street, in the Town of Magog and Province of Quebec, so that the Town shall bear the cost of maintaining the structure in the same proportion which it contributed to the cost of reconstruction in 1928, when the Town agreed to pay one-third of such cost.

File No. 31922.2

THURSDAY, the 10th day of November, A.D. 1932.

Hon C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of the town of Magog,—

The Board orders: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49214

In the matter of the application of F. H. Owen, Chief of the Tariff Bureau, Michigan Central Railroad, for permission to change the effective date of Tariff C.R.C. No. 3578.

File No. 27612.69

WEDNESDAY, the 9th day of November, A.D. 1932.

Hon C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the change in rates provided in Michigan Central Tariff C.R.C. No. 3578, effective November 25, 1932, is being made effective by the Canadian Pacific and the Canadian National Railway Companies on November 24, 1932, and its being desirable that there be uniformity in the effective date from competitive points,—

The Board orders: That the Michigan Central Railroad be, and it is hereby, permitted to publish and file a supplement to Tariff C.R.C. No. 3578, changing the effective date thereof to November 24, 1932.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 504

In the matter of the General Order of the Board No. 382, dated May 11, 1923, amending paragraph 1685 of the Regulations for the Transportation of Explosives, approved by General Order No. 204, dated August 11, 1917; And in the matter of the application of the Canadian National Railways for an Order further amending the said paragraph 1685 of the Regulations for the Transportation of Explosives.

File No. 1717.59

MONDAY, the 14th day of November, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
F. A. LABELLE, *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed in support of the application, and the report and recommendation of the Chief Operating Officer and the Assistant Chief Traffic Officer of the Board,—

It is ordered:

1. That the said General Order No. 382, dated May 11, 1923, be, and it is hereby, rescinded.

2. That paragraph No. 1685 of the Regulations for the Transportation of Explosives, approved by the said General Order No. 204, dated August 11, 1917, be struck out and the following substituted therefor, namely:—

“1685. (1) On lines where regular trains are operating in freight service only, cars containing explosives must not be hauled in a train that carries passengers.

"(2) Where only a mixed train service is operated, or where passengers are carried in a caboose car of a freight train—

"(a) a car containing a shipment of explosives (not exceeding 1,000 pounds) may be hauled, provided the said car be so placed in the train that not less than three freight cars are between it and the car carrying passengers, and not less than one freight car between it and the locomotive hauling the train.

"(b) A car containing a shipment of explosives exceeding 1,000 pounds may be hauled, the said car to be so placed in the train that not less than five freight cars are between it and the car carrying passengers, and not less than three freight cars between it and the locomotive hauling the train.

"(c) Provided, further, that should there be two or more cars containing explosives at any one time, a special train must be run to carry such shipments over the branch or mixed train run.

"(d) Whenever it is practicable to do so, cars containing explosives must be placed between freight cars not bearing 'ACID' or 'INFLAMMABLE' placards. Cars containing explosives must have air and hand brakes in service."

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49243

In the matter of the application of J. A. Argo, Chief of Tariff Bureau, Canadian National Railways, for permission to make effective, on less than statutory notice, certain rates on bulk grain from Bay and River ports to Montreal:

File No. 27612.70

THURSDAY, the 24th day of November, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

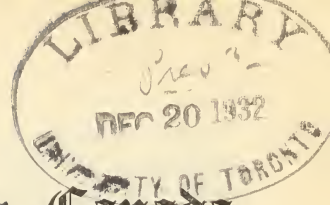
Upon its appearing that the Canadian National Railways, through error, neglected to provide in their tariffs for rates on bulk grain from Bay and River ports to Montreal, based on 14.34 cents per 100 pounds on wheat, to become effective December 1, 1932, which would result in making a higher rate applicable—

The Board Orders: That the Canadian National Railways be, and they are hereby, permitted to restore, effective December 1, 1932, the rates on bulk grain from Bay and River ports to Montreal published in Section 6 of Supplement No. 4 to Tariff C.R.C. No. E-1768.

C. P. FULLERTON,
Chief Commissioner.

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The Board of Railway Commissioners for Canada



Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, December 15, 1932

No. 21

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Application of the Pere Marquette Railway Company and the Lake Erie and Detroit River Railway Company for a rehearing of the application of the Town of Walkerville, Ont., for the construction of the subway on Wyandotte Street, Walkerville, Ont., under the tracks of the Pere Marquette and Lake Erie and Detroit River Railway Companies.

File 27929.40

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

On May 23, 1930, the town of Walkerville applied for a level crossing over the tracks of the Pere Marquette and the Lake Erie and Detroit River Railway Companies at Wyandotte street, in the town of Walkerville, Ont. Shortly afterwards, the Pere Marquette intimated that it favoured a subway.

The Board's Chief Engineer, on June 7, 1930, recommended that instead of a level crossing there should be considered the question of construction of a subway on Wyandotte street, under the Pere Marquette tracks, and the closing of Edna street. The closing of the latter involved a diversion and thus rendered it possible to make a contribution from the Railway Grade Crossing Fund and the ordinary contribution from the railway.

The matter was taken up with the parties to show cause.

In the application now launched by the Pere Marquette for a rehearing, it is intimated that in apportioning the costs for work done in connection with the construction of the subway on Wyandotte street the Board has considered costs which are not incidental to the crossing of the railway's lands or incidental to the protection ordered; and it is contended that the Board has no power to include such cost in its apportionment.

The Board has intentionally limited itself to the cost of construction of the subway and the costs necessarily incidental thereto. It was aware of the road-improvement phase of Wyandotte street and used its utmost endeavours to keep the question of contribution to the subway and costs necessarily incidental thereto separate and distinct from the factors concerned with road improvement.

I am of opinion that, on what is submitted, justification for a rehearing is not apparent.

December 6, 1932.

Commissioner Norris concurred.

ORDER No. 49287

In the matter of the Order of the Board No. 45155, dated August 2, 1930, as amended by Orders numbered 46471 and 47962, dated respectively March 27, 1931, and January 12, 1932, authorizing and directing the Corporation of the Town of Walkerville, in the Province of Ontario, to construct a subway under the tracks of the Pere Marquette and the Lake Erie & Detroit River Railway Companies on Wyandotte Street; and Orders numbered 48397 and 48736, dated respectively April 7, 1932, and June 14, 1932, apportioning the cost of constructing and maintaining the said subway;

And in the matter of the application of the Pere Marquette Railway Company and The Lake Erie & Detroit River Railway Company for a rehearing of the application respecting the said Orders.

File No. 27929.40

WEDNESDAY, the 7th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon reading what is filed in support of the application,

It is ordered: That the same be, and it is hereby, refused.

S. J. McLEAN,

Assistant Chief Commissioner.

Complaint of John P. Stevenson, Toronto, Ontario, re Classification Rule No. 16, Canadian Freight Classification No. 18

(File No. 38433)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

On August 6, 1932, Mr. John P. Stevenson of Toronto wrote to this Board on behalf of his clients, The Franklin Paint Company of Cleveland, Ohio, the following letter:—

“On June 24, 1930, there was forwarded from Winnipeg, Man., to Gull Lake, Sask.—

1 cs. brushes.. . . .	10	250½
1 kit liquid cement (roofing).. . . .	20	111
1 steel ½ bbl. liquid cement.. . . .	450	84

It is my contention that this shipment should have been billed at—

1 kit liquid cement roofing.. . . .	30	111
1 steel ½ bbl. cement.. . . .	450	84

the authority for the omission of the “Brush” being contained in the 2nd paragraph of section 327 of the Railway Act, which says that charges on that part of a shipment weighing a fraction of five pounds shall be waived providing the charges on the whole shipment equals or exceeds the charge provided for under the minimum rule.

(2) Section 2(b) of rule 16, CF Classification 18 requires that the least (minimum) weight on *any part of a shipment* shall be ten pounds, but I do not think that unless this change has the sanction of Parliament itself the terms of the Railway Act, as provided for in section 327, paragraph 2, can be varied. If such change has been authorized by Parliament, the only body who has authority to change an Act of theirs, may I have a copy of same please?"

Rule 16, Section 2(b) reads:—

"In computing charges five pounds and over will be considered ten; under five pounds will be waived, subject to a minimum weight of ten pounds for each class of freight."

The applicant takes the view that rule 16, section 2(b) of the Canadian Freight Classification is not valid in law it not having received what he conceives to be the necessary sanction, viz. that of Parliament itself.

From his point of view it is not, therefore, required to discuss whether this rule is in conflict with section 327 (2) of the Railway Act, which reads as follows:—

"In estimating the weight of any goods in any one single shipment on which the toll amounts to more than the minimum, or "smalls" toll, any fraction of five pounds shall be waived by the company, and five or any fraction above five and up to ten pounds shall be deemed ten pounds by the company."

It is argued that under section 327, where several different classes of goods, each in a separate package, are shipped "in any one single shipment," the classes weighing less than five pounds are subject to no charge. For example take the following shipment:—

420 pounds freight—1st class			
4	"	"	1½ times first
4	"	"	double first
4	"	"	second class
4	"	"	third class

Here, it is said that the railway company could charge only for the 420 pounds of 1st class freight and that all the other classes go free because the Act says that "any fraction of five pounds shall be waived by the company." Such an interpretation would lead to an absurdity and unless compelled to put such a construction on the section, one should not do so.

What do the words "the weight of any goods in any one single shipment" mean? They may mean (1) the total weight of all the goods in the shipment without regard to the different classes of freight it contains, or (2) the respective weight of each individual class. It clearly cannot mean the first because the total weight in a shipment of goods of different classes would not be relevant. Besides the subsection does not say "the weight of *the goods* in any one single shipment," but the weight of *any goods* in any one single shipment, thus clearly referring to the weight of goods of a particular classification.

True, in construing this subsection one would naturally relate the words "on which," in line two, to the words immediately preceding them, namely: "in any one single shipment," but to do so in this case would give the section the unreasonable construction above referred to. The section can be made intelligible and a reasonable construction given to it by relating the words "on which," above referred to, to the words "any goods" and give to the last words the meaning of any goods of one classification.

This view is emphasized by the fact that subsection 2 is one of the three subsections contained in section 327, intended to eliminate fractions in connection with calculations of freight rates.

The first subsection provides that "in all cases a fraction of a mile in the distance over which traffic is carried on the railway shall be considered as a whole mile."

The second subsection is the one we are considering, and the third subsection says that "in estimating the tolls to be charged in passenger tariffs hereafter issued, any amount not exceeding two and a half cents shall be waived by the company, and above two and a half cents and up to five cents shall be considered as five cents by the company."

Subsection 2 provides a formula for estimating the weight of goods of a particular class on which the toll amounts to more than the minimum.

I am, therefore, of the opinion that where goods of a particular class are contained in a shipment, and the weight of the goods in that particular class does not amount to the minimum or "smalls" toll, the fractional rule referred to in subsection 2 has no application.

It may be useful to point out that rule 16, section 2(b) of the Rules of the Canadian Freight Classification, which provides for a minimum weight of ten pounds for each class of freight has been approved by the Board under section 322 of the Railway Act, and not being in conflict with the Railway Act is in full force and effect.

December 7, 1932.

The Assistant Chief Commissioner concurred.

ORDER No. 49290

In the matter of the complaint of John P. Stevenson, of Toronto, Ontario, against the charges made on a shipment from Winnipeg, Manitoba, to Gull Lake, Saskatchewan, on June 24, 1930, under the provisions of Rule 16 of the Canadian Freight Classification No. 18.

File No. 38433

FRIDAY, the 9th day of December, A.D. 1932.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed,—

It is ordered: That the complaint be, and it is hereby, dismissed.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49256

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 28th day of November, A.D. 1932.

Hon C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Truro, ex Inverness, Nova Scotia, to Middleton, Nova Scotia, in item 110 of Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 110 of Tariff C.R.C. No. 856, approved herein, is 4½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49274

In the matter of the General Order of the Board No. 162, dated March 30, 1916, approving the conditions on the telegraph forms used by telegraph companies subject to the jurisdiction of the Board on which messages to be transmitted are to be written:

File No. 13622

MONDAY, the 5th day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
F. A. LABELLE, *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the joint application of the Canadian Pacific and the Canadian National Railway Companies, and reading what is filed in support thereof,—

It is ordered: That the terms and conditions approved by the Board under its General Order No. 162, dated March 30, 1916, be, and they are hereby, prescribed as the terms and conditions upon which telegraph and cable messages shall be transmitted and dealt with by telegraph and cable companies subject to the jurisdiction of the Board; and that the said General Order No. 162, including the said terms and conditions, and this order, be published for three weeks in the *Canada Gazette*.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 505

In the matter of the General Order of the Board No. 119, dated January 31, 1914, requiring railway companies, inter alia, when they intend to remove a regular station agent, first to notify the local municipality or Board of Trade of the intention to apply to the Board for an Order permitting such removal, such application and notice to show the gross earnings at the station in question from passenger as well as freight traffic and express business during the previous year.

File No. 4205.7

SATURDAY, the 3rd day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*F. A. LABELLE, *Deputy Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

It is ordered: That the said General Order No. 119, dated January 31, 1914, be amended by striking out the words, "the previous year" at the end of the first paragraph of the operative part of the order and substituting the words, "the previous three years."

C. P. FULLERTON,

Chief Commissioner.

GENERAL ORDER No. 506

In the matter of the General Order of the Board No. 159, dated February 18, 1916, amending Rule 93 of the train rules, designated as the "Uniform Code for Canadian Railways," approved by General Order No. 42, dated July 12, 1909, by adding thereto the words, "By night, or in foggy or stormy weather, proper lights must be placed on cars or engines obstructing main tracks within yard limits."

File No. 4135.21

SATURDAY, the 3rd day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*F. A. LABELLE, *Deputy Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed on behalf of the Canadian National Railways, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said General Order No. 159, dated February 18, 1916, be amended by changing the last clause to read—

"By night, or in foggy or stormy weather, a red light must be placed on cars or engines obstructing main tracks within yard limits."

C. P. FULLERTON,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF
SEPTEMBER, 1932

Railway accidents182, with 13 persons killed and 179 injured.
Railway accidents at highway crossings 30, with 2 persons killed and 39 injured.

212	15	218
-----	----	-----

	Killed	Injured
Passengers.....	1	28
Employees	3	131
Others	11	59
	15	218

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NEW BRUNSWICK

- 1 Automobile—Skidded into pilot of engine. Licence Illinois 801-157.

QUEBEC

- 3 Automobile—Auto driver failed to stop for crossing. Licences, Que. H-17319; 65884; Ont. B-0114.
2 Automobile—Auto stalled on crossing. Licences, Que. 24046; 69512.
2 Horse-drawn vehicles.

ONTARIO

- 5 Automobile—Ran into side of train. Licences, Ont. FY-784; Y-4532; Y-980; AC-888; U-1136.
2 Automobile—Excessive speed of auto. Licences, Ont. EJ-614; Ind. 74-437.
1 Automobile—Auto driver attempted to beat train. Licence Ont. ES-715.
1 Automobile—Auto stalled on crossing. Licence Ont. A-2634.
1 Automobile—Auto driver failed to observe operation of signal. Licence Ont. N-4655.
3 Automobile—Licences, Ont. L-1765; BY-847; 34-522-C.
1 Horse-drawn vehicle.

SASKATCHEWAN

- 1 Automobile—Ran into side of train. Licence Sask. 18-362.
1 Automobile—Licence Sask. 3209.

ALBERTA

- 4 Automobile—Licences, Alta. 83-811; 9423; B-772; T-8-708.
1 Horse-drawn vehicle.

BRITISH COLUMBIA

- 1 Automobile—Licence B.C. 10-007.

Of the 30 accidents at highway crossings, 27 occurred at unprotected crossings and 3 at protected crossings. Twenty-three (23) of the accidents occurred during the daylight hours and 7 at night.
OTTAWA, December 2, 1932.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, January 1, 1933

No. 22

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ORDER No. 49302

*In the matter of tariffs published to cover traffic moving within or from the
"preferred territory," as defined in the Maritime Freight Rates Act.*

File No. 34822.13

WEDNESDAY, the 7th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 75, 143, and 166 of Supplement No. 51 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act, such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement on traffic moving under such tariff prior to September 23, 1932, are as follows, namely:—

For—	Rates in cents per 100 pounds
Item 75	10
Item 143	10
From Annapolis Royal, N.S.	13½
From North Range, N.S.	14
Item 166	12

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49289

In the matter of the application of the Cornwall-Northern New York International Bridge Corporation, hereinafter called the "Applicant," for approval of its Tariff C.R.C. No. 1, covering tolls to be charged in respect of the bridge of the Ottawa and New York Railway Company, across the St. Lawrence River, between the Town of Cornwall, in the Province of Ontario, and the Town of Nyando, in the State of New York, on file with the Board under file No. 38514.1.

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's Tariff C.R.C. No. 1, covering tolls to be charged in respect of the bridge of the Ottawa and New York Railway Company across the St. Lawrence river, between the town of Cornwall, in the province of Ontario, and the town of Nyando, in the state of New York, on file with the Board under file No. 38514.1, be, and it is hereby, approved.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49293

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 10A of Supplement No. 16 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 10A of Supplement No. 16 to Tariff C.R.C. No. 851, approved herein, is that published in item 13, section C, Supplement No. 12, to Tariff C.R.C. No. 725.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49294

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published on less than carload shipments of apples in Tariff C.R.C. No. 875, filed by the Dominion Atlantic Railway Company under

section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 875, approved herein, are published in Dominion Atlantic Railway Company's Tariff C.R.C. No. 670.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49297

In the matter of tariffs published to apply on traffic moving within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, Assistant Chief Commissioner.

G. A. STONE, Commissioner.

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4585, filed by the Canadian Pacific Railway Company, be, and the same are hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal tolls to be used for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. E-4585 prior to September 23, 1932, are as follows:—

To—	Rates in cents per 100 pounds
Belleville, Ont.	34
Brockville, Ont.	33
Fort William, Ont. (Lake and Rail)	37
Hamilton, Ont.	33
Kingston, Ont.	32½
London, Ont.	36½
Montreal, Que.	30½
Ottawa, Ont.	37½
Quebec, Que.	30½
Port Arthur, Ont. (Lake and Rail)	37
Riviere du Loup, Que.	31
Sarnia, Ont.	36½
Sault Ste. Marie, Ont.	36
Sorel, Que.	29
Toronto, Ont.	33½
Trois Rivières, Que.	31
Windsor, Ont.	36½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49298

In the matter of tariffs published to apply on traffic moving within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, Assistant Chief Commissioner.

G. A. STONE, Commissioner.

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 868, filed by the Dominion Atlantic Railway Company, be, and the same are hereby, approved, subject to

the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 868, prior to September 23, 1932, are as follows:—

On commodities per list bars, iron or steel to zinc, plate or sheet except flour and feed, canned goods, lard, and onions:

To—	Rates in cents per 100 pounds
Beaver Bank, N.S.	12½
Fennertys, N.S.	
Groves, N.S.	
South Uniacke, N.S.	
Hibberts, N.S.	
Mount Uniacke, N.S.	
Stillwater, N.S.	15½
Ellerhouse, N.S.	
Hartville, N.S.	
Newport, N.S.	
Three Mile Plains, N.S.	19
Windsor, N.S.	
Falmouth, N.S.	
Mount Denson, N.S.	
Hantsport, N.S.	
Avonport, N.S.	
Horton Landing, N.S.	
Grand Pre, N.S.	
Wolfville, N.S.	
Port Williams, N.S.	
Kentville, N.S.	22
Aldershot, N.S.	
Mill Village, N.S.	
Centreville, N.S.	
Sheffield Mills, N.S.	
Hillaton, N.S.	
Canning, N.S.	
Kingsport, N.S.	
Billtown, N.S.	24
Lakeville, N.S.	
Woodville, N.S.	
Grafton, N.S.	
Somerset, N.S.	
Weston, N.S.	
Coldbrook, N.S.	
Cambridge, N.S.	
Waterville, N.S.	
Berwick, N.S.	
Aylesford, N.S.	
Auburn, N.S.	
Kingston, N.S.	
Middleton, N.S.	
Brickton, N.S.	24
Lawrencetown, N.S.	
Paradise, N.S.	
Bridgetown, N.S.	

To—	On flour and feed Rates in cents	On canned goods, lard, and onions per 100 pounds
Beaver Bank, N.S..	13	13
Fennertys, N.S..	13	
Groves, N.S..	12	
South Uniacke, N.S..	12	
Hibberts, N.S..	12	
Mount Uniacke, N.S..	13½	
Stillwater, N.S..	15½	17
Ellerhouse, N.S..	14½	
Hartville, N.S..	14½	
Newport, N.S..	15½	
Three Mile Plains, N.S..	18½	20
Windsor, N.S..		
Falmouth, N.S..		
Mount Denson, N.S..		
Hantsport, N.S..		
Avonport, N.S..		
Horton Landing, N.S..		
Grand Pre, N.S..		
Wolfville, N.S..	22	23½
Port Williams, N.S..		
Kentville, N.S..		
Aldershot, N.S..		
Mill Village, N.S..		
Centreville, N.S..		
Sheffield Mills, N.S..		
Hillaton, N.S..	24½	25½
Canning, N.S..		
Kingsport, N.S..		
Billtown, N.S..		
Lakeville, N.S..		
Woodville, N.S..		
Grafton, N.S..		
Somerset, N.S..		
Weston, N.S..		
Coldbrook, N.S..		
Cambridge, N.S..	25½	26½
Waterville, N.S..		
Berwick, N.S..		
Aylesford, N.S..		
Auburn, N.S..		
Kingston, N.S..		
Middleton, N.S..		
Brickton, N.S..	25½	26½
Lawrencetown, N.S..		
Paradise, N.S..		
Bridgetown, N.S..		

On groceries, not specifically provided for, listed in Item 17, page 137, to Item 12, page 152, inclusive, of Canadian Freight Classification No. 18, classifying third and fourth class.

On hardware, not specifically provided for, listed in Item 21, page 153, to Item 18, page 169, inclusive, of Canadian Freight Classification No. 18, classifying third and fourth class.

To—

Rates in cents per 100 pounds

Beaver Bank, N.S. }
Fennertys, N.S. }
Groves, N.S. }
South Uniacke, N.S. . . }
Hibberts, N.S. }
Mount Uniacke, N.S. . . }

13

13

Stillwater, N.S. }
Ellerhouse, N.S. }
Hartville, N.S. }
Newport, N.S. }

15½

15½

Three Mile Plains, N.S. }
Windsor, N.S. }
Falmouth, N.S. }
Mount Denson, N.S. . . }
Hantsport, N.S. }
Avonport, N.S. }
Horton Landing, N.S. . . }
Grand Pre, N.S. }
Wolfville, N.S. }
Port Williams, N.S. . . . }

20

20

Kentville, N.S. }
Aldershot, N.S. }
Mill Village, N.S. . . . }
Centreville, N.S. }
Sheffield Mills, N.S. . . }
Hillaton, N.S. }
Canning, N.S. }
Kingsport, N.S. }

22

22

Billtown, N.S. }
Lakeville, N.S. }
Woodville, N.S. }
Grafton, N.S. }
Somerset, N.S. }
Weston, N.S. }
Coldbrook, N.S. }
Cambridge, N.S. }
Waterville, N.S. }
Berwick, N.S. }
Aylesford, N.S. }
Auburn, N.S. }
Kingston, N.S. }
Middleton, N.S. }

23

23

Brickton, N.S. }
Lawrencetown, N.S. . . }
Paradise, N.S. }
Bridgetown, N.S. }

24

24

On *dried fruits and groceries*, not specifically provided for, listed in Item 17, page 137, to Item 12, page 152, inclusive, and on *hardware*, not specifically provided for, listed in Item 21, page 153, to Item 18, page 169, inclusive, of Canadian Freight Classification No. 18, classifying first and second class.

To—	Rates in cents per 100 pounds
Beaver Bank, N.S.	16
Fennertys, N.S.	
Groves, N.S.	
South Uniacke, N.S.	
Hibberts, N.S.	
Mount Uniacke, N.S.	
Stillwater, N.S.	20½
Ellerhouse, N.S.	
Hartville, N.S.	
Newport, N.S.	
Three Mile Plains, N.S.	25½
Windsor, N.S.	
Falmouth, N.S.	
Mount Denson, N.S.	
Hantsport, N.S.	
Avonport, N.S.	
Horton Landing, N.S.	
Grand Pre, N.S.	
Wolfville, N.S.
Port Williams, N.S.	
Kentville, N.S.	27½
Aldershot, N.S.	
Mill Village, N.S.	
Centreville, N.S.	
Sheffield Mills, N.S.	
Hillaton, N.S.	
Canning, N.S.	
Kingsport, N.S.	
Billtown, N.S.	30½
Lakeville, N.S.	
Woodville, N.S.	
Grafton, N.S.	
Somerset, N.S.	
Weston, N.S.	
Coldbrook, N.S.	
Cambridge, N.S.	
Waterville, N.S.	
Berwick, N.S.	
Aylesford, N.S.	
Auburn, N.S.	
Kingston, N.S.	
Middleton, N.S.	
Brickton, N.S.	31½
Lawrencetown, N.S.	
Paradise, N.S.	
Bridgetown, N.S.	

To—	Rates in cents per 100 pounds		Rates in dollars per cask	
	Petroleum products	Fresh fruits	Molasses in casks	
Beaver Bank, N.S..	13	19	\$2 10	
Fennertys, N.S..				
Groves, N.S..				
South Uniacke, N.S..				
Hibberts, N.S..				
Mount Uniacke, N.S..				
Stillwater, N.S..	15	26	2 65	
Ellerhouse, N.S..				
Hartville, N.S..				
Newport, N.S..				
Threet Mile Plains, N.S..	23	3 00	
Windsor, N.S..				
Falmouth, N.S..				
Mount Denson, N.S..				
Hantsport, N.S..				
Avonport, N.S..				
Horton Landing, N.S..				
Grand Pre, N.S..				
Wolfville, N.S..				
Port Williams, N.S..				
Kentville, N.S..	39	3 35	
Aldershot, N.S..				
Mill Village, N.S..				
Centreville, N.S..				
Sheffield, Mills, N.S..				
Hillaton, N.S..				
Canning, N.S..				
Kingsport, N.S..				
Billtown, N.S..	41½	4 10	
Lakeville, N.S..				
Woodville, N.S..				
Grafton, N.S..				
Somerset, N.S..				
Weston, N.S..				
Coldbrook, N.S..				
Cambridge, N.S..				
Waterville, N.S..				
Berwick, N.S..				
Aylesford, N.S..				
Auburn, N.S..				
Kingston, N.S..				
Middleton, N.S..				
Brickton, N.S..	43½	4 25	
Lawrencetown, N.S..				
Paradise, N.S..				
Bridgetown, N.S..				

On molasses, in tierces and barrels, the company will be allowed the same difference as provided under Tariffs C.R.C. Nos. 795 and 786.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49299

In the matter of tariffs published to apply on traffic within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 875, filed by the Dominion Atlantic Railway Company, be, and the same are hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act, such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal tolls to be used for the purpose of reimbursement on traffic moving under the said Supplement No. 1 to Tariff C.R.C. No. 875, prior to September 23, 1932, are as follows:—

To—	Rates in cents per barrel
Ellerhouse, N.S.	15½
Newport, N.S.	
Windsor, N.S.	15½
Hantsport, N.S.	
Avonport, N.S.	16½
Port Williams, N.S.	
Kentville, N.S.	17½
Coldbrook, N.S.	19½
Berwick, N.S.	
Aylesford, N.S.	20½
Kingston, N.S.	
Wilmot, N.S.	22½
Annapolis Royal, N.S.	
Clementsport, N.S.	25
Digby, N.S.	
North Range, N.S.	29
Yarmouth, N.S.	
Brooklyn, N.S.	16½
Mosherville, N.S.	
Clarksville, N.S.	17½
Kennetcook, N.S.	
South Maitland, N.S.	20½
Lower Truro, N.S.	
Mill Village, N.S.	19½
Kingsport, N.S.	
Billtown, N.S.	20½
Grafton, N.S.	
Somerset, N.S.	23
Weston, N.S.	

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49300

*In the matter of tariffs published to cover traffic moving within or from the
"preferred territory," as defined in the Maritime Freight Rates Act.*

File No. 34822.13

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 869, filed by the Dominion Atlantic Railway Company, be, and they are hereby approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act; such approval to apply only until the 23rd of September, 1932.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 869, prior to September 23, 1932, are as follows:—

On groceries, not specifically provided for, listed in Item 17, page 137, to Item 12, page 152, of the Canadian Freight Classification No. 18, classifying first and second class hardware, not specifically provided for, listed in Item 21, page 153, to Item 18, page 169, inclusive, of the Canadian Freight Classification No. 18, classifying first and second class.

To—

Hebron, N.S. }	15
Brazil Lake, N.S. . . . }	
Hectanooga, N.S. . . .	16
Meteghan, N.S. }	20½
Blackadair, N.S. . . . }	
Saulnierville, N.S. . . . }	23½
Little Brook, N.S. . . . }	
Church Point, N.S. . . . }	26
Weymouth, N.S. }	
Plymton, N.S.	28
North Range, N.S. . . . }	30
Bloomfield, N.S. . . . }	
Digby, N.S.	31
Bear River, N.S.	32
Clementsport, N.S. . . .	34
Annapolis Royal, N.S. . .	35
Bridgetown, N.S.	37
Paradise, N.S. }	38½
Lawrencetown, N.S. . . . }	
Middleton, N.S. }	

	On bars, iron or steel, cement, lime, nails, paper, building, salt, soap, spikes, staples, sugar.	On canned goods, lard, lead, sheet, molasses, onions, roofing composition, zinc, plate or sheet.
Hebron, N.S. }	9½	10½
Brazil Lake, N.S. . . . }		
Hectanooga, N.S.	10½	11½
Meteghan, N.S. }	12½	13½
Blackadair, N.S. }		
Saulnierville, N.S. . . . }	13	15
Little Brook, N.S. . . . }		
Church Point, N.S. . . . }	14½	16
Weymouth, N.S. }		
Plymton, N.S.	18	19½
North Range, N.S. . . . }	18	19
Bloomfield, N.S. }		
Digby, N.S.	19	20
Bear River, N.S.	20	21
Clementsport, N.S. . . .	21	22
Annapolis Royal, N.S. . .	21	22
Bridgetown, N.S.	22	23
Paradise, N.S. }	23	24
Lawrencetown, N.S. . . . }		
Middleton, N.S. }		

Groceries, not specifically provided for, listed in Item 17, page 137, to Item 12, page 152, inclusive, of Canadian Freight Classification No. 18, classifying third and fourth class. Hardware, not specifically provided for, listed in Item 21, page 153, to Item 18, page 169, inclusive, of Canadian Freight Classification No. 18, classifying third and fourth class.

Hebron, N.S. }	10
Brazil Lake, N.S. . . . }	
Hectanooga, N.S.	11
Meteghan, N.S. }	13
Blackadair, N.S. }	
Saulnierville, N.S. . . . }	14
Little Brook, N.S. . . . }	
Church Point, N.S. . . . }	15
Weymouth, N.S. }	
Plymton, N.S.	18½
North Range, N.S. . . . }	18½
Bloomfield, N.S. }	
Digby, N.S.	19½
Bear River, N.S.	20½
Clementsport, N.S. . . . }	21½
Annapolis Royal, N.S. . . }	
Bridgetown, N.S.	22½
Paradise, N.S. }	23½
Lawrencetown, N.S. . . . }	
Middleton, N.S. }	

Dried Fruits

Hebron, N.S. }	15½
Brazil Lake, N.S. . . . }	
Hectanooga, N.S. . . .	16½
Meteghan, N.S. }	19½
Blackadair, N.S. }	
Saulnierville, N.S. . . . }	23
Little Brook, N.S. . . . }	
Church Point, N.S. . . . }	25
Weymouth, N.S. }	
Plymton, N.S.	27½
North Range, N.S. . . . }	29
Bloomfield, N.S. }	
Digby, N.S.	30
Bear River, N.S.	31
Clementsport, N.S. . . .	33
Annapolis Royal, N.S. . .	34
Bridgetown, N.S.	36
Paradise, N.S. }	38
Lawrencetown, N.S. . . . }	
Middleton, N.S. }	

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49303

*In the matter of tariffs published to cover traffic moving within or from the
"preferred territory," as defined in the Maritime Freight Rates Act.*

File No. 34822.13

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published from Saint John to Annapolis in item 46B of Supplement No. 28 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company, be, and the same is hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act, the Dominion Atlantic Railway Company's proportion to be reported at 15½ cents per 100 pounds. This approval shall apply only until September 23, 1932.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal rate to be used for the purpose of reimbursement on traffic moving under the said item 46B of Supplement No. 28 to Tariff C.R.C. No. 812, prior to September 23, 1932, is 19¼ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49304

In the matter of tariffs published to apply on traffic within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published to St. Catharines and Thorold, Ontario, in Tariff C.R.C. No. E-4590, filed by the Canadian Pacific Railway Company, be, and the same are hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal tolls to be used for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. E-4590 prior to September 23, 1932, are as follows:—

To—	Rates in cents per 100 pounds
St. Catharines, Ont.	33
Thorold, Ont.	33

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49305

In the matter of tariffs published to apply on traffic moving within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 10th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 76 of Supplement No. 38 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal tolls to be used for the purpose of reimbursement on traffic moving prior to September 23, 1932, are as follows:—

On—	Rates in cents per 100 pounds
Less than carloads.	35½
Carloads.	23

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49310

In the matter of tariffs published to apply within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 12th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the toll published in item 45A of Supplement No. 13 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company, be, and the same is hereby, approved, subject to subsection 3 of section 3 of the said Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic moving under the said item 45A of Supplement No. 13 to Tariff C.R.C. No. 851, prior to September 23, 1932, is 16½ cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49295

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 12th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published from Yarmouth to Truro, Nova Scotia (destined to New Glasgow, Nova Scotia), in item 240-D of Supplement No. 41 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 240-D of Supplement No. 41 to Tariff C.R.C. No. 856, approved herein, is 12 cents per 100 pounds.

S. J. McLEAN,

Assistant Chief Commissioner.

ORDER No. 49296

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 12th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published to apply from junction points with the Canadian National Railways on traffic ex Hillsboro, New Brunswick, in item 325 of Supplement No. 23 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 325 of Supplement No. 23 to Tariff C.R.C. No. E-4310, approved herein, are those published in Canadian Pacific Railway Tariffs C.R.C. Nos. E-3219 and E-4221, in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49301

In the matter of tariffs published to apply on traffic moving within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 12th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 84 of Supplement No. 23 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic moving under the said item 84 of Supplement No. 23 to Tariff C.R.C. No. E-4310, prior to September 23, 1932, is 17 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49311

In the matter of tariffs published to apply within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 13th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 874, filed by the Dominion Atlantic Railway Company, be, and the same are hereby, approved, subject to subsection 3 of section 3 of the said Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal rates which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 874, approved herein, are published in Dominion Atlantic Railway Tariff C.R.C. No. 750, except from the following stations, the normal rates for which are as shown below:—

From—	Rates in cents less-than-carloads	Per barrel carloads
Billtown, N.S.	36	28
to Grafton, N.S.		
Somerset, N.S.	38	29½
to Weston, N.S.		
Truro, N.S.	31	22½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49312

In the matter of tariffs published to apply within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 13th day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 874, filed by the Dominion Atlantic Railway Company, be, and the same are hereby, approved, subject to subsection 3 of section 3 of the said Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal tolls to be used for the purpose of reimbursement on traffic moving under the said Supplement No. 1 to Tariff C.R.C. No. 874 prior to September 23, 1932, are as follows:—

From—	Rates in cents per barrel
Ellershouse, N.S.	14
Windsor, N.S.	
Falmouth, N.S.	14½
Hantsport, N.S.	
Avonport, N.S.	14½
Port Williams, N.S.	
Kentville, N.S.	16
Coldbrook, N.S.	18
Berwick, N.S.	
Aylsford, N.S.	19½
Kingston, N.S.	
Wilmot, N.S.	22½
Annapolis Royal, N.S.	
Clementsport, N.S.	24
Digby, N.S.	
North Range, N.S.	24½
Yarmouth, N.S.	
Brooklyn, N.S.	14½
Masherville, N.S.	
Clarksville, N.S.	16
Kennetcook, N.S.	
Pattersons, N.S.	18
Burtens, N.S.	
South Maitland, N.S.	19½
Clifton, N.S.	
Lower Truro, N.S.	19½
Mill Village, N.S.	18
Kingsport, N.S.	
Billtown, N.S.	18
Grafton, N.S.	
Somerset, N.S.	20
Weston, N.S.	

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49313

In the matter of tariffs published to apply on traffic moving within or from the "preferred territory," as defined in the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 15th day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Saint John to Fredericton, New Brunswick, in item 192 of Supplement No. 26 to Tariff C.R.C. No. E-4572, filed by the Canadian Pacific Railway Company, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the Maritime Freight Rates Act; such approval to apply only until September 23, 1932.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic under the said item 192 of Supplement No. 26 to Tariff C.R.C. No. E-4572, prior to September 23, 1932, is 18 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49315

In the matter of the application of The Express Traffic Association of Canada, on behalf of the express companies subject to the jurisdiction of the Board, for approval of proposed supplement to the Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., approved by General Order of the Board No. 296, dated May 15, 1920.

File No. 1717.12.1

THURSDAY, the 15th day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Upon reading what has been filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the proposed supplement to the Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., on file with the Board under file No. 1717.12.1, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49339

In the matter of the application of the Canadian Manufacturers' Association, Toronto, Ontario, for an Order disallowing certain changes in Supplement Nos. 13 and 18 to Agent G. C. Ransom's Tariff C.R.C. No. 466, on the ground that such changes have the effect of constituting an advance in rates for which statutory notice was not given.

File No. 38516

FRIDAY, the 16th day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon reading what is filed in support of the application, the reply of the Canadian Freight Association, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered that:

(1) Item 1050-B of Supplement 13 to Agent G. C. Ransom's Tariff C.R.C. No. 466, the wording of which constitutes an advance in rates, be, and it is hereby, disallowed as from May 26, 1932, owing to lack of statutory notice being given.

(2) The portion of Item 1051 of Supplement 18 to Agent G. C. Ransom's Tariff C.R.C. No. 466 reading—

“Leather, cow, finished, including split leather, dyed or further finished than the original tan,”

which, in view of the Board's finding, as contained in the preceding paragraph hereof, constituted an advance in rate, be, and it is hereby, disallowed as from November 1, 1932, owing to lack of statutory notice being given.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49346

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the “Applicant Companies,” for approval of their Tariff C.R.C. No. 13, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

TUESDAY, the 20th day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies Tariff C.R.C. No. 13, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49352

In the matter of tariffs published to apply on traffic moving within or from the "preferred territory," as defined in the Maritime Freight Rates Act; and Order No. 49298, dated December 10, 1932.

File No. 34822.13

TUESDAY, the 20th day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in the said order, in certifying a normal rate on fresh fruits from Halifax, Nova Scotia,—

It is ordered: That the figures, "23," opposite stations Three Mile Plains, N.S., to Port Williams, N.S., inclusive, on page 6 of the said order be struck out, and the figures "33" substituted therefor.

C. P. FULLERTON.

Chief Commissioner.

ORDER No. 49353

In the matter of the Order of the Board No. 49311, dated December 13, 1932, approving tariff C.R.C. No. 874, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

WEDNESDAY, the 21st day of December, A.D. 1932.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon its appearing that the said Order No. 49311 was issued in error,—

It is ordered: That the said Order No. 49311, dated December 13, 1932, be, and the same is hereby, rescinded; and that Order No. 48984, dated August 20, 1932, approving the said Tariff C.R.C. No. 874, be continued in full force and effect.

S. J. McLEAN,

Assistant Chief Commissioner.

GENERAL ORDER No. 507

In the matter of Section 345 of the Railway Act and General Order No. 399, dated May 1, 1924, providing, inter alia, the form of affidavit verifying the returns required under the Order to be filed with the Board.

File No. 496.27

WEDNESDAY, the 21st day of December, A.D. 1932.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

It is ordered: That the said General Order No. 399, dated May 1, 1924, be, and the same is hereby, amended by deleting subclauses (a) and (b) of paragraph 3 of the order, and substituting in lieu thereof the following, namely:—

- “(a) That I am an officer of the said company having full knowledge of all the free or reduced transportation issued by the said company, and having the custody of, or access to, all the records of the company from which the returns of such transportation are made up under the provisions of section 345 of the Railway Act.
- “(b) That I have caused records of free transportation issued by the said company to be kept in accordance with the provisions of the said section 345 of the Railway Act and the regulations and directions of the Board of Railway Commissioners for Canada by its General Orders, and the return of such free or reduced transportation submitted herewith for the period named herein has been prepared from such records.
- “(c) That to the best of my knowledge and belief all free or reduced rate transportation issued by the company is included in the return submitted herewith, and has been issued in compliance with the provisions of the Railway Act and of the Orders and Regulations of the said Board made thereunder; and that none of the same has been issued that is not authorized by law.”

C. P. FULLERTON,

Chief Commissioner,

Board of Railway Commissioners for Canada.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, January 12, 1933

No. 23

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of Other Vehicles, and Pedestrians at Protected Highway Crossings

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from August 1, 1932, to November 30, 1932, show ninety-three cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from July 1, 1932, to September 30, 1932, and (Eastern Lines) from August 1, 1932, to October 31, 1932, show a total of forty-nine cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deprecates this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAYS

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Aug. 3.....	1.58 p.m...	Josephine St., Wingham, Ont.	D.M. 27.....	Driver of car attempted to cross over crossing against signal of watchman. Emergency brake being applied on train averted accident.
" 7.....		Temporary crossing, Rosthern, Sask.		Auto driver ran into side of train.
" 17.....	2.45 p.m...	Park St., Kitchener, Ont.		Driver of car disregarded watchman's signal.
" 28.....	3.27 p.m...	Highway No. 12, Rosthern, Sask.	Sask. 35318.....	Drove onto crossing and into side of train.
Sept. 1.....	1.50 a.m...	Highway crossing over north leg of wye, 3rd public crossing north of Callander Station, Ont	CC-464.....	Auto failed to stop although flagged by brakeman, and struck side of car next to engine.

CANADIAN NATIONAL RAILWAYS—Continued

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Sept. 2.....	9.00 K.....	Highway crossing, Landis, Sask.	Sask. 32097.....	Auto drove onto crossing and was struck by engine.
" 2.....	9.50 K.....	111th Avenue, Cross- ing, Edmonton, Alta.	Alta. 83811.....	Drove up onto track and was struck by track motor car.
" 6.....	21.25 K.....	Water St., Winnipeg, Man.	Man. 7-025.....	Ran by red light.
" 6.....	17.10 K.....	Water St., Winnipeg, Man.	15-347.....	Ran by stop disk.
" 7.....	20.30 K.....	Water St., Winnipeg, Man.	Man. 2-815.....	Ran by red light.
" 8.....	20.05 K.....	Water St., Winnipeg, Man.	Man. 14-637.....	Ran by red light.
" 8.....	17.25 K.....	Private crossing west Holdan Stn., Alta.	Alta. 47711.....	Auto drove onto crossing in front of train and was struck.
" 8.....	8.15 A.....	Atwater Ave., Mont- real, Que.	Que. 21189.....	Driver failed to stop on signal of flagman.
" 9.....		1st public crossing west of Laval Links Station, mlge. 8-8, L'Orignal sub-div.	Que. H-17319 ..	Driver of auto did not stop before crossing track. At- tempted to cross ahead of train; was struck and auto badly damaged.
" 10.....	7.20 A.....	Atwater Ave., Mont- real, Que.	Que. 42415.....	Lachine Canal Bridge was open for 20" and driver refused to back off Canal Bank main line to let engine pass.
" 10.....	7.20 A.....	Atwater Ave., Mont- real, Que.	Que. 18378.....	Canal Bridge was open for 20" and driver would not back off main line (Canal Bank), block- ing yard engine for 20".
" 10.....	19.50 K.....	Water St., Winnipeg, Man.	Man. 52.....	Ran by red light.
" 10.....	17.25 K.....	Water St., Winnipeg, Man.	Man. 9-368.....	Ran by stop disk.
" 12.....	17.20.....	Water St., Winnipeg, Man.	Man. 15-817.....	Ran by stop disk.
" 14.....	19.50.....	Water St., Winnipeg, Man.	Man. 9-950.....	Ran by red light.
" 14.....	8.25 K.....	Sixth St., Brandon, Man.	6-490.....	Driver of auto ignored stop signal when engine almost at crossing.
" 17.....	21.45.....	1st Ave. East, Prince Albert Yard, Sask.	T-462.....	Delivery truck ran into train and was caught between car and station platform.
" 17.....	17.20.....	Water St., Winnipeg, Man.	Man. 18-537 2-850.	Ran by stop disk.
" 17.....	19.45.....	Water St., Winnipeg, Man.	9-757.....	Ran by red light.
" 18.....	17.10 X.....	Water St., Winnipeg, Man.	Man. 24787.....	Ran by red light.
" 18.....	19.55 K.....	Water St., Winnipeg, Man.	Man. 1705.....	Ran by red light.
" 19.....	22.08 K.....	Public Crossing, New St., Calgary, Alta.	Alta. 9423.....	Auto attempted to cross tracks in front of train and was struc by engine. Driver injured.
" 19.....	8.50 K.....	Public Crossing M.P. 87-3, Drumheller Sub.	Alta. B-772.....	Truck attempted to cross tracks in front of train and was struck by engine. Driver of truck injured, but not serious- ly.
" 20.....	20.20.....	Water St., Winnipeg, Man.	Man. 14570.....	Ran by red light.
" 20.....	19.05.....	Water St., Winnipeg, Man.	Man. 14-462.....	Ran by red light.
" 20.....	17.05.....	Water St., Winnipeg, Man.	B.C. 44-209.....	Ran by stop disk.
" 23.....	11.55 a.m.....	1st public crossing north of Avening Stn., Ont.	JP-371.....	Auto attempted to cross from east to west ahead of train. Proper crossing signals given, also alarm whistle. Driver admitted accident was his own fault and that he had not looked for train.....

CANADIAN NATIONAL RAILWAYS—Continued

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Sept. 23.....	19.15.....	Water St., Winnipeg, Man.	21-350.....	Ran by red light.
" 25.....	20.50.....	Water St., Winnipeg, Man.	Man. 2-788 2-417	Ran by red light.
" 26.....	8.05 a.m....	Dundas Highway, 1st public crossing south of Tansley station, Ont.	Mich. MC79593.	Driver of auto did not notice train approaching and ran into motor coach, train 661. Auto and motor coach slightly damaged. Usual crossing sig- nals given and bell ringing. No personal injuries.
" 26.....	21.40.....	Water St., Winnipeg, Man.	Man. 14-540.....	Ran by red light.
" 27.....	21.25.....	Water St., Winnipeg, Man.	Man. 1-933.....	Ran by red light.
" 29.....	9.00 a.m....	Dundas St., Trenton, Ont.	13-923 C..... 12-064 T.....	Failed to stop at crossing. Train came to full stop until trans- port backed off crossing. Ran by red light.
Oct. 1.....	19.00 K.....	Water St., Winnipeg, Man.	Man. 28068 3291	
" 3.....	3.50 p.m....	1st public crossing E. of St. Paulin Station, Grand Mere sub- div, Que.	F-19190 48374	Auto truck did not come to a stop before going over railway track.
" 3.....		Public crossing, M.P. No. 30-9, Stettler Sub., Alta.		Truck attempted to cross in front of train and stalled on crossing. No personal injuries.
" 4.....		Kingston Road, Cobourg, Ont.	Ont. MV-638...	Crashed through gate at railway crossing.
" 4.....	22.35 K.....	Water St., Winnipeg, Man.	Man. 3901.....	Ran by red light.
" 4.....	20.35 K.....	Water St., Winnipeg, Man.	Man. 7138.....	Ran by red light.
" 4.....	17.15 K.....	Water St., Winnipeg, Man.	Man. 13132 14223	Ran by stop disk.
" 6.....	9.48 a.m....	Water St., Newmar- ket, Ont.	Ont. O-5014.....	Auto skidded onto crossing and was struck by last two coaches of train. Whistle sounded and engine bell ringing for this crossing, also electric bell at crossing ringing. No personal injury.
" 7.....	8.25.....	Public crossing west of Reford Stn., Sask.		Auto ran into side of engine.
" 8.....	17.07.....	Water St., Winnipeg, Man.	Man. 611.....	Ran by stop disk.
" 8.....	20.25 K.....	Water St., Winnipeg, Man.	Man. 13481.....	Ran by red light.
" 9.....	17.45 K.....	Water St., Winnipeg, Man.	Man. 2542.....	Ran by stop disk.
" 11.....	81 K.....	Water St., Winnipeg, Man.	Man. 6465.....	Ran by red light.
" 11.....	23.15 K.....	Water St., Winnipeg, Man.	Man. 2634.....	Ran by red light.
" 11.....		Kingston Road, Cobourg, Ont.	Que. H-16375...	Did not have auto under control approaching crossing.
" 12.....	7.25 a.m....	Atwater Ave., Mont- real, Que.	Que. 48306.....	Standing on track when bridge open and driver refused to clear same, blocking yard engine for 20".
" 14.....	10.01 p.m....	Perth St., Brockville, Ont.	Ont. LD 645....	Auto ran through south gate, breaking same.
" 14.....	7.20 a.m....	George Marcotte St., Roberval, Que.	Que. K-1095....	Attempted to cross track ahead of train. Truck badly dam- aged. One occupant of truck injured.
" 15.....		1st Avenue West cross- ing, Prince Albert, Sask.	Sask. 6-701....	Auto ran into engine.
" 18.....		Public crossing M.P. 60-7, Three Hills Subd., Alta.	Alta. T-11-354..	Auto truck ran into side of engine. No personal injuries.
" 18.....		Kingston Road, Cobourg, Ont.	Ont. 28-375 C...	Driver of auto unable to stop to avoid hitting gate.

CANADIAN NATIONAL RAILWAYS—Continued

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Oct. 19.....	8.40 p.m....	3rd public crossing N. of Callander station.	CD 302.....	Driver of auto approached crossing at high rate of speed and swung auto sharply to right and ran up alongside of train but did not strike cars or engine.
" 21.....	19.35 K.....	Water St., Winnipeg, Man.	Man. 15-109....	Ran by red light.
" 23.....	.....	Public crossing M.P. 89-0, Oyen Subd., Alta.	Alta. 54157....	Auto ran into side of train. No personal injuries. Auto damaged.
" 24.....	11.45 a.m....	1st public crossing S. of north switch at Thornlea, Ont.	12-36-10.....	Auto stalled on crossing. No personal injuries. Crossing whistle and engine bell sounding at time of accident.
" 25.....	20.35 K.....	Water St., Winnipeg, Man.	Man. 23-075....	Ran by red light.
" 25.....	23.38 K.....	Water St., Winnipeg, Man.	Man. 11-109....	Ran by red light.
" 26.....	20.30 K.....	Water St., Winnipeg, Man.	Man. 23-072....	Ran by red light.
" 27.....	17.10 K.....	Water St., Winnipeg, Man.	Man. 4-189.....	Ran by stop disk.
" 28.....	.....	115th Ave., Crossing, Edmonton, Alta.	Alta. T-12-751..	Defective brakes on truck and rear end of truck was struck and demolished by train.
" 28.....	8.00 p.m....	2nd public crossing of Garneau, Que.	40385.....	Drove truck into side of train, derailling 9 cars. Train in motion at time; bell ringing and whistle blown for crossing.
" 29.....	16.00 K.....	Water St., Winnipeg, Man.	Man. 11-121....	Ran by stop disk.
" 29.....	15.30.....	1st crossing North of New Westminster, B.C.	B.C. 57-966....	Driver apparently was not aware of crossing and applied brakes, but was foul of crossing before stopping. Accident avoided by train stopping.
" 31.....	17.20 K.....	Water St., Winnipeg, Man.	Man. 4-136.....	Ran by red light.
Nov. 1.....	8.55 a.m....	Toronto St., Port Credit, Ont.	C-2171.....	Running by stop signal after train had started to shove out at St. Lawrence Starch Co.
" 3.....	.....	Kingston Road East, Cobourg, Ont.	Ont. M.W. 921..	Drove auto through crossing gates and did not stop after accident.
" 6.....	17.45 K.....	Water St., Winnipeg, Man.	Man. 13-015....	Ran by red light.
" 8.....	.....	Public crossing M.P. 50-7, Three Hills, Subd., Alta..	.....	Driver of auto attempted to cross tracks ahead of approaching train.
" 12.....	7.35.....	Sixth St., Brandon, Man.	Man. 39-030....	Ignoring stop signal when switch train almost at crossing.
" 12.....	.....	Kingston Road, Cobourg, Ont.	Ont. C-8908....	Attempted to cross track ahead of train when gates down.
" 13.....	.....	Kingston Road, Cobourg, Ont.	Ont. N.O. 859..	Approaching railway crossing at speed of about 50 miles per hour.
" 18.....	11.40 a.m....	Charlotte St., Peter- boro. Ont.	Ont. N.E. 296...	Approached crossing with car not under control on account of the condition of the roads.
" 19.....	9.50 K.....	Water St., Winnipeg, Man.	Man. 30-198....	Ran over the stop board.
" 19.....	5.45 p.m....	Front St., Toronto, Ont.	Z-5995.....	Gates down and engine working over crossing when driver of auto squeezed between points of east gates, passed over track in front of moving cars endangering lives of himself and 3 passengers, also yard crew.
" 23.....	14.00 K.....	Two poles south M.P. 12, Kingman Subd.	.....	Brakes on track motor car failed to hold resulting in motor car striking sleigh with injury to section labourer.

CANADIAN NATIONAL RAILWAYS—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Nov. 23.....	6.40 p.m....	Hurontario St., Port Credit, Ont.	K-6127.....	Ignored signal and crossed about ten feet ahead of train No. 103.
" 24.....	10.45 p.m....	Essa St., Allandale, Ont.	KD 88.....	Auto ran through lowered gates, breaking same.
" 25.....	10.40 K.....	Public crossing M.P. 52-8, Drumheller Subd., Alta.	Alta. B-4174....	Attempted to get over crossing before train, and truck was struck by train. No personal injuries.
" 25.....	11.25 a.m....	Atwater Ave., Mont- real, Que.	Que. H-4126....	Ran by red flag.
" 25.....	5.20 p.m....	Seigneur St., Mont- real, Que.	500.....	Driver of auto passed under gate as same was being lowered.
" 25.....	8.30 p.m....	William St., Chat- ham, Ont.	Ont. X-3547....	Crashed lower south east gate.
" 26.....	9.20 a.m....	Front St., Orillia, Ont.	C 7467.....	Driver of truck unable to stop at crossing and smashed into lower gates, breaking same.
" 26.....	12.28.....	No. 12 Highway, Ros- thern, Sask.	Sask. 55600....	Applied brakes too late; car slid on track and was struck by train.
" 29.....	18.20 K.....	Water St., Winnipeg, Man.	Man. 2786.....	Ran against red light.
" 30.....	11.15 p.m....	1st crossing east of South Parry yard, Depot Harbour Subd., Ontario.	CE 940.....	Auto ran into side of engine. Engine whistle and bell sound- ed. Dense fog at time.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practice
MANITOBA DISTRICT— Sept. 20, 1932..	22.15 K.....	Talbot Ave., Winnipeg	26950.....	Auto travelling west struck gates which were lowered for an approaching train, damag- ing gates.
SASKATCHEWAN DISTRICT— July 31, 1932..	20.20 K.....	Broadway, Yorkton..	45-917.....	Crossed over track when stop signal up.
Aug. 9, 1932..	13.20 K.....	" "	2-006.....	Crossed over track just ahead of engine 976.
Sept. 19, 1932..	19.15 K.....	Highway crossing, McLean Yard.	727.....	Extra East 903 struck auto driven by R. A. Arnold, Regina. Crossing protected by bell which was ringing and Mr. Arnold did not stop.
Sept. 27, 1932..	17.15 K.....	Broadway, Yorkton..	58-670.....	Tried to cross over track when engine 2080 was backing to- wards crossing, against stop signal; then stopped on track and train was signalled to stop to prevent mishap.
ALBERTA DISTRICT— Aug. 26, 1932..	15.00 K.....	4th St. West, Calgary.	17-259.....	Ran into west centre gate, break- ing it.
Sept. 22, 1932..	11.20 K.....	" "	12-304.....	Ran into south gate, breaking it.
BRITISH COLUMBIA DISTRICT— July 1, to Sept. 30, 1932..	.....	North Vancouver ferry crossing.	.....	Pedestrians duck under crossing gates as they are being low- ered.
Sept. 8, 1932..	17.05 K.....	" "	B.C. 145.....	Ran under gate as it was being lowered, gate tearing hole in roof.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
NEW BRUNSWICK DISTRICT—				
Aug. 5.....	3.07 p.m...	Douglas Ave., St. John		Auto stalled on track while gates were being lowered for train No. 15.
" 18.....	6.30 p.m...	" "	J-7589.....	Auto dashed over crossing at very high rate of speed.
" 20.....	7.10 p.m...	" "		Boys held down gates while being lifted.
Sept. 3.....	5.30 p.m...	" "	J-7246.....	Auto dashed ahead under gates while being lowered for freight train.
" 19.....	7.08 p.m...	" "		Some girls pushed up gates after No. 39 passed.
" 24.....	4.21 p.m...	" "	J-1034.....	Auto dashed under gates while being lowered for train No. 105.
Oct. 8.....	3.40 p.m...	" "	J-7274.....	Auto dashed under gates while being lowered for engine 2663.
" 17.....	10.15 p.m...	" "		Large closed car dashed over crossing at high rate of speed.
" 18.....	6.10 p.m...	" "		Boys held down gates while being lifted for train No. 103.
" 20.....	8.40 p.m...	" "		Auto dashed under gates while being lowered for engine 3423.
" 27.....	3.10 p.m...	" "	J-3221.....	Auto dashed under gates while being lowered for No. 15.
QUEBEC DISTRICT—				
Oct. 19.....		Portland St., St Johnsbury.	Vt. 67530.....	While gates were down same were struck by car, causing damage to gates.
Aug. 6.....		St. Valier St., Quebec.	Que. 15399.....	Gates had been lowered when auto failed to stop and struck end of gate.
" 23.....		" "	Que. 30103.....	Gates were down when auto failed to stop in time and driver swerved to left and struck gate No. 1 breaking same.
Oct. 20.....		" "	Que. 16072.....	Gates were down for train 87 and before they could be raised, auto parked on west side of crossing, came ahead and broke five feet off gate arm.
Aug. 30.....		Cote de Liesse, Dorval.	Que. 38065.....	Auto ran into north gate breaking same.
Sept. 29.....		Montcalm St., Hull W.	Ont. BK-733...	Auto ran through northeast gate breaking same close to casting.
" 30.....		Dorval Ave., Dorval.	Que., unknown.	Auto travelling south struck and broke north gate.
ONTARIO DISTRICT—				
Oct. 25.....	10.40 p.m...	Scugog St., Bowmanville.		While gate on south side of track was in lowered position, auto approached from north at very high rate of speed and crashed through gate.
Aug. 5.....	9.20 a.m...	Dundas St., Cooksville.	Ont. 7-395C....	Auto truck stopped at crossing to let freight train pass over. Although wigwag and bells still ringing, after train cleared track, started to cross and failed to notice passenger train on opposite track and truck was struck by same.
" 21.....	4.50 p.m...	Tecumseh Rd., Windsor.	Ont. V-515.....	Auto disregarded watchman's stop sign and crossed tracks ahead of switch cars; watchman had to jump to avoid being struck by auto.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practice
Sept. 3.....	1.25 p.m...	Queen St., Guelph....	Ont. N-4655....	Auto failed to see wigwag signals working, hear crossing bell ringing or hear train whistle and was struck by train No. 650.
" 13.....	7.35 p.m...	Richmond St., London.	Ont. T-565.....	In rain, auto slid into crossing gate arm due to wet pavement.
" 29.....	11.27 p.m...	Queen St. Chatham...	Mich. 734-691...	While crossing gates down auto ran into and broke gate arm.
" 29.....	5.05 p.m...	Queen St., Guelph....	Ont. JK-784....	Auto disregarded wigwag signal which was working and crossed tracks in front of train 652.
Oct. 5.....	10.45 p.m...	Quebec St., London...	Ont. U-1952....	Auto disregarded watchman's stop signal and crossed tracks immediately in front of freight train. Watchman had to jump out of way to avoid being struck.
" 5.....	3.30 p.m...	Adelaide St., London.	Ont. U-2046....	Driver of auto disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 6.....	11.48 p.m...	Northumberland St., Ayr.	Ont. HB-8.....	Auto disregarded wigwag signal whistle and bell signals and was struck by engine.
" 6.....	5.30 p.m...	Pall Mall St., London.	Ont. Z-444.....	Auto disregarded bell signals and lowered gates and dashed over tracks to avoid being delayed by approaching train.
" 8.....	2.43 p.m...	Adelaide St., London.	Ont. U-6427....	Auto passed watchman's stop signal while yard engine switching on crossing.
" 13.....	11.18 a.m...	Queen St., Guelph....	Ont. 385113....	Auto truck drove into side of train. Engine bell ringing, whistle sounded, crossing bell ringing and wigwag signal working.
" 16.....	10.50 a.m...	Vansittart St., Woodstock.	.....	Notwithstanding whistle signals, wigwag signals and crossing bell ringing, pedestrian crossed in front of train No. 21 and was struck and killed.
" 20.....	7.20 p.m...	Waterloo St., London.	Ont. T-5061....	Auto approached crossing too fast, bell ringing and one gate arm lowered. Auto went on to rails and then had to back clear of lowering gate arms.
" 20.....	8.14 p.m...	Queen St., Guelph....	Ont. 383-69....	Auto truck struck by train 645 on crossing, whistle signals sounded, crossing bell ringing and wigwag signal working.
" 29.....	7.02 p.m...	Queen St., Streetsville	Ont. M-9763....	Notwithstanding engine whistle signals, wigwag signals and crossing bell ringing, auto attempted to cross tracks in front of passenger train and was struck.
Sept. 8.....	.....	Front St. West, Toronto.	Ont. A-8094....	Auto disregarded stop signal being given by yardman on ground with red lantern and ran into gate.
Oct. 24.....	.....	" " ..	Ont. K-4956....	Auto travelling west ran into and damaged north half of gate No. 6.
" 8.....	.....	MacLennan Ave., Toronto.	Ont. L-2575....	Auto backed into and damaged northeast gate.
ALGOMA DISTRICT- Oct. 9.....	11.30 p.m...	Elm St., Sudbury....	Ont. BY-37....	Auto ran into and broke south-east and southwest gate.

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UNIVERSITY OF TORONTO

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, January 15, 1933

No. 24

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Complaint of Confederated Freight Association, Toronto, Ontario, concerning charges collected on a carload of crushed stone shipped on May 10, 1928, from Danville, Que., to Point St. Charles, Que.

File No. 38498.

BY THE BOARD:

On October 22, 1932, the Confederated Freight Association, Toronto, Ont., on behalf of the George W. Reed Company, wrote the Board requesting that it determine the legal rate on a carload of crushed stone shipped by the Canadian Johns-Manville Company from Danville to Point St. Charles, Que., on May 10, 1928. The complainant and the railway company have set out their position and contentions in written submissions filed with the Board.

The original freight receipt of the Canadian National Railways shows charges collected as follows:—

	Weight lbs.	Rate	Total
Carload of crushed stone.. . . .	63,400	5c.	\$31 70
Ex A. and D. Railway advance charges.. . . .		1c.	6 34
Switching.. . . .			1 50
			<u>\$39 54</u>

It is the advance charge of 1 cent per 100 pounds which is in question, complainant alleging this was illegally collected, contending such charge was prohibited under rule 27 of the Canadian Freight Classification and stating: "It is not shown that the A. and D. Railway is a participating carrier with any railway, but is operated by private interest, and that the owners are the shippers of the commodity, and, under the Railway Act, chapter 170, page 124, section 323, may not levy tolls unless approved by the Board."

The Asbestos and Danville Railway is a provincially incorporated railway company, Statutes of Quebec, 60 Victoria 1897, chapter 74, and files its tariffs with the Quebec Public Service Commission only. It is not subject to the jurisdiction of this Board, consequently, its tariffs do not require our approval and section 323 of the Railway Act is not applicable to this company. The Canadian National Railways are incorrect in their statement that the tariff of the A. and D. Railway is on file with the Board and their charge established under section 323 of the Railway Act.

In its tariff C.R.C. No. E-1153, in effect at the time this shipment moved, the Canadian National Railways published in item 3540, on crushed stone or screenings (in bulk in open top cars) rates from Danville, Que., as follows:—

To	Rate in Cents per 100 lbs.
Arvida, Que.	13½
Hamilton, Ont.	14
Isle Maligne, Que.	13½
Montreal, Que. (Rule 9)	4½ (x)
Quebec, Que.	4½

(x) Rate on shipments in bulk in box cars (ex A. and D. Railway) is 5 cents, minimum 60,000 pounds

Rule 9 provided that rates published to Montreal also applied to Point St. Charles.

The shipment in question was in a box car, namely C.N. 303339. The rates published in this tariff clearly apply for the haul on the Canadian National Railways from Danville to the points named and do not include the charge made by the A. and D. Railway for the service it performs in making delivery to the Canadian National Railways at Danville; such charge is in addition to the rates above shown.

Rule 27 of the Canadian Freight Classification, referred to by complainant, has no application in this case, as it refers only to advancing charges to shippers, owners, consignees, or agents thereof, and has no reference to advancing the charges of another railway company.

The term "ex. . . . railway" has a well recognized use in tariffs and constitutes such rate as a proportional one on shipments from the railway indicated. It certainly cannot be properly considered as including the connecting line's rate to the junction point; this requires to be done by making the other carrier a participant in the tariff and the publication of a joint through rate. The tariff in question does not contain any joint through rate in connection with the A. and D. Railway and the A. and D. Railway is not a party to the tariff.

The practice of advancing charges of other carriers of the description here in question is a very general one. Wherever there are no through joint rates and the cases are many, the charges of the connecting carrier are shown as an advance charge on the freight bill, the same as done in this instance, and the Board has always recognized the propriety of advancing such charges. Business could not be properly conducted otherwise. For example, advance charges of ocean carriers on import shipments are billed forward by the railway company, as, otherwise, the consignee would require to have an agent at the seaboard to pay such charges.

The tariff contains other items of a similar character. Item 110 names rates on paving blocks from Sherbrooke (ex Q.C. Railway); item 290 publishes rates from Diamond Junction (ex Q.C. Railway); item 400 publishes rates from Limoilou Junction, Que. (ex Q. Rly. L. and P. Co.); item 670 publishes a rate from Jacques Cartier Junction (ex C.P.R.); and there are other similar items.

Complainant refers to rule 37 of the Board's General Order No. 398, which covers the rules and regulations governing the construction and filing of tariffs, and states he relies upon it as fully covering the point at issue. This rule reads:—

"Unless shown in individual tariffs affected thereby, each carrier shall publish, with proper C.R.C. numbers, and file separate tariffs which shall contain in clear, plain and specific form and terms, all the terminal charges, such as arbitraries, switching, icing, storage, elevation, etc., together with all other charges and rules which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment.

"Where the terminal charges as herein described are published in separate tariffs, reference thereto must be made in individual tariffs containing rates affected thereby."

Complainant, obviously, misapprehends the rule in question. It provides that if, in addition to the rate shown in the tariff of the issuing carrier, in this case the rate of the Canadian National Railways from Danville to Point St. Charles, there are certain other charges made *by that carrier* for switching, icing, storage, etc., such charges should be shown in the tariff affected thereby, or published separately in another tariff and, where separately published, reference thereto should be made in individual tariffs containing rates affected thereby. The rule has no application with respect to the charges of some other company which is not a party to the tariff and, consequently, is not relevant to the issue here.

RULING

The ruling of the Board, therefore, is that the rate published from Danville to Point St. Charles in item 3540 of Canadian National Railways Tariff C.R.C. No. E-1153, does not include the charge made by the Asbestos and Danville Railway for the haulage of the shipment on its line.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, ONT.,
January 4, 1933.

GENERAL ORDER No. 508

In the matter of the application of Canadian Industries Limited for permission to ship by freight the explosive known as "Polar Monobel No. 7," which does not contain the ant-acid required by Section 1552 of the Regulations for the Transportation of Explosives, approved by General Order No. 204, dated August 11, 1917.

File No. 1717.60

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

TUESDAY, the 27th day of December, A.D. 1932.

Upon its appearing that, in the process of manufacture of "Polar Monobel No. 7," the acid is removed from the nitro-glycerine before it is utilized; and upon the consideration of what has been filed in support of the application, and the report of the Chief Inspector of Explosives, Department of Mines, the Railway Companies consenting,—

It is ordered: That the Regulations for the Transportation of Explosives, approved by the said General Order No. 204, dated August 11, 1917, be amended as follows, namely:—

Paragraph 1552—by adding the words—

"The above regulation does not apply to the explosive known as POLAR MONOBEL No. 7."

Paragraph 1559—by adding the words—

“When the explosive known as POLAR MONOBEL No. 7 is shipped the name must be clearly shown on each package.”

Paragraph 1641—by adding at the end of the first paragraph—

“When the explosive known as POLAR MONOBEL No. 7 is shipped this name should be shown in Shipper's Certificate.”

Paragraph 1652—by adding at the end of the first paragraph—

“When the explosive known as POLAR MONOBEL No 7 is shipped this name must also be shown.”

(Sgd.) S. J. McLEAN,
Assistant Chief Commissioner,

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF OCTOBER, 1932

Railway accidents 178, with 19 persons killed and 175 injured.
Railway accidents at highway crossings 35, with 6 persons killed and 45 injured.

	213	25	220
		Killed	Injured
Passengers..		—	20
Employees..		7	124
Others..		18	76
		25	220

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

QUEBEC

- 5 Automobile—Auto driver failed to stop for crossing. Que. licences 84439, 123079, 49859, F-19190, K-1095.
1 Automobile—Que. licence 13825.

ONTARIO

- 4 Automobile—Ran into side of train. Ont. licences FO-256, 5941-X, HB-696, 282810.
1 Automobile—Auto driver drove through gates in lowered position. Ont. licence LS-38.
1 Automobile—Auto stalled on crossing. Ont. licence M-9763.
15 Automobile—Ont. licences HF-8, 385113C, 53976C, JM225, OA-521, CM-495390, HN-364, R-8219, LD-760, DR-147, V-1822, C-2164, V-1-560, 4-175-C; N.Y. licence 86-1966.

- 1 Pedestrian.
1 Horse-drawn vehicle.

SASKATCHEWAN

- 2 Automobile—Ran into side of train. Sask. licences D-447, 1-933.
2 Automobile—Sask. licences 1296, 6-701.

BRITISH COLUMBIA

- 1 Automobile—Ran into side of train. B.C. licence 35-813.
1 Automobile—B.C. licence 4172.

Of the 35 accidents at highway crossings, 24 occurred at unprotected crossings and 11 at protected crossings. Eighteen of the accidents occurred during the daylight hours and 17 at night.

OTTAWA, January 7, 1933.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, February 1, 1933

No. 25

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Application of the Canadian Pacific Railway Company for an amendment, under Sec. 51 of the Railway Act, of the Board's Order No. 46191, dated 27th January, 1931, in the matter of the Winnipeg Street subway at Regina by adding a paragraph stating that, pending payment of the contribution from the Railway Grade Crossing Fund, the City shall pay to the company an amount equal to 50 per cent thereof, with interest thereon at five per cent per annum from the date of expenditure until the date of payment; provided that, as payments are received by the company from such fund the company shall pay to the city 50 per cent thereof.

(File No. 26807.41).

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

By an application in writing dated December 19, 1930, the City of Regina and the Canadian Pacific Railway Company applied to the Board for an order authorizing the railway company to build for and on behalf of the city and the railway company a subway at Winnipeg street, in the city of Regina, in accordance with plans designed and specifications agreed upon between the parties, and subject to and upon the condition that the expense of construction and maintenance of said subway be borne and paid by the said parties, as set out in a certain agreement made and entered into between the parties and dated November 10, 1930, and subject to all the terms and provisions of the said agreement.

The said agreement provided that the cost of the said subway and of any and all necessary works, outlays, land damages and expenditures in connection therewith should be borne and paid by the parties thereto in equal shares.

In compliance with the said application the Board made an order, being No. 46191, directing the railway company to construct the said subway upon the terms of the said agreement, and further directing that forty per cent of the cost of construction should be paid out of the Railway Grade Crossing Fund.

When the time arrived for payment of the contribution from the Railway Grade Crossing Fund it was found that the funds on hand were insufficient to meet the commitments which had been made. Some time in the year 1931 it

was discovered that commitments against the fund to the extent of over \$1,700,000 had been made by the Board, and that only \$618,000 was available to meet these commitments. In order to meet this situation the Board in January, 1932, decided to pay a pro rata dividend on all outstanding commitments from the amount then available, and pay the balance from time to time as the annual Government contributions were received. Under this arrangement the Board paid a thirty-four per cent dividend in January, 1932, and a further dividend of twelve per cent after the April, 1932, contribution of \$200,000 had been made.

The cost of the subway here in question was approximately \$170,000, and the Board's contribution, forty per cent, was approximately \$68,000. Of this latter amount \$31,000 odd have been paid, leaving a balance of approximately \$37,000.

Under these circumstances, the Canadian Pacific Railway Company apply for an order that, pending payment of the balance of the contribution from the Railway Grade Crossing Fund, the city shall pay to the railway company an amount equal to fifty per cent thereof with interest thereon at the rate of five per cent per annum from the date of expenditure to the date of payment.

The city of Regina requested to be heard on this application, and the matter came on for hearing before the Board at Regina on December 10, 1932. The only answer that counsel for the city could make to the application was that under present conditions it was difficult for the city to make the payment.

The order will go directing the city of Regina to pay to the Canadian Pacific Railway Company one-half of the unpaid balance of the contribution promised by the Board together with interest thereon at five per cent from the date of expenditure. The order will contain a provision that upon payment of this amount, the city shall be entitled to be repaid by the Board the said amount, as and when the Board shall be in a position to make the said payments.

At the hearing a question was raised by Mr. Reycraft, who represented the Canadian Pacific Railway Company, as to the cost of carrying the city of Regina's light and power lines through the subway. Before the subway was built, these lines were carried over the tracks by overhead wires. When the subway was built, the lines were placed under the sidewalk through the subway. It seems that in doing the work provision was made for additional ducts beyond what were actually needed at the time. Mr. Reycraft's contention is that these should not form part of the cost of the subway.

Under ordinary circumstances and in the absence of an agreement, the city would probably only be entitled to charge up actual replacement costs, but in this case the parties have made specific provision in the agreement respecting the cost of the rearrangement of the light and power lines. By section 14 of the agreement it is provided:—

"That the cost of rearranging electric light, telegraph and telephone poles and lines, excepting the cost of duct and manholes chargeable to Department of Telephones, Provincial Government, for underground telephone lines installation, as may be necessary by reason of the construction, maintenance and use of the said subway, and the cost of the necessary arrangement, rearrangement or diversion of the street railway service during the construction of the said subway shall be borne and paid by the parties hereto in equal shares."

In the face of this provision it is impossible to say that any part of the cost of the rearrangement of the light and power lines can be excluded from the general costs of the work.

While the company may be paying something more in connection with light and power lines than they expected, it is, in my opinion, more than made

up to them by the fact that the subway is built with provision for two additional tracks, which necessitated its being lengthened about twenty-eight feet in its most expensive part. The agreement, of course, covers this, but in the absence of specific agreement the Board would not have included the cost of this in the general cost of the subway.

January 12, 1933.

Commissioner Stoneman concurred.

ORDER No. 49385

In the matter of the subway at Winnipeg Street, in the City of Regina, Province of Saskatchewan, constructed by the Canadian Pacific Railway Company under the Order of the Board No. 46191, dated January 27, 1931, providing that forty per cent of the cost of constructing the said subway be paid out of "The Railway Grade Crossing Fund," the remainder of such cost, under agreement, to be borne equally by the Railway Company and the City of Regina.

File No. 26807.41

FRIDAY, the 13th day of January, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas the amount to the credit of the Railway Grade Crossing Fund does not at the present time permit of the payment of the full forty per cent allowed by the said Order No. 46191 towards the cost of the construction of the said subway;

And whereas the railway company applies for an amending order requiring the city to reimburse the company fifty per cent of the cost of such work remaining unpaid and owing from the fund, with interest thereon at five per cent per annum from the date of expenditure until the date of payment;

Upon hearing the matter at the sittings of the Board held at Regina on the 10th day of December, 1932, and argument by counsel for the parties,—

It is ordered: That the sum of \$18,270.96, being one-half of the balance due the railway company out of the Railway Grade Crossing Fund, paid by the company in constructing the subway directed by the said Order No. 46191, dated January 27, 1931, with interest thereon at five per cent per annum from the date of expenditure until the date of payment, be paid to the company by the city: Provided that, as and when the Board shall be in a position to make the said payment out of the Railway Grade Crossing Fund, the city shall be entitled to be repaid by the Board the said amount.

C. P. FULLERTON,
Chief Commissioner.

Application of the London and Port Stanley Railway Company for permission to dispense with watchmen from 7 a.m. to 6 p.m. daily, at the crossing of Wellington Street, in the City of St. Thomas, Ont.

File No. 25542.46

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Originally, the London and Port Stanley Railway Company provided protection at the Wellington street crossing during the hours from 7 a.m. to 6 p.m., the cost being at the expense of the railway. Subsequently, the street railway adopted the one-man-car system and additional protection was provided from 6 p.m. to midnight, 50 per cent being borne by the railway and 50 per cent by the city. Later, the city abandoned the street railway operation, and the entire cost of the protection of the crossing is now borne by the railway for the period from 7 a.m. to 6 p.m. When the city stopped operation of the street cars, the watchman protecting the crossing from 6 p.m. to 12 midnight was taken off.

There is a slow order of ten miles an hour. The London and Port Stanley Railway is asking for permission to take off the watchman from 7 a.m. to 6 p.m.

Each of the four angles of the crossing has an open view; traffic on the railway is light. Special attention to economies in railway operation, under existing conditions, is justifiable. Pending improvements in railway conditions, as shown by increased traffic at the crossing in question, the present provision for watchman may be removed. Application to reinstate watchman because of changed conditions, or to provide some other type of protection may be brought up by the city of St. Thomas on notice.

January 16, 1933.

Commissioner Stone concurred.

ORDER No. 49407

In the matter of the application of the London and Port Stanley Railway Company, hereinafter called the "Applicant Company," for leave to discontinue the services of the watchman protecting the crossing of Wellington Street by its line of railway, in the City of St. Thomas and Province of Ontario, between the hours of 7 a.m. and 6 p.m. daily.

File No. 25542.46

TUESDAY, the 17th day of January, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Thomas, January 9, 1933, in presence of counsel for and representatives of the applicant company and the city of St. Thomas, and what was alleged,—

It is ordered: That the applicant company be, and it is hereby, granted leave to discontinue the services of the watchman at the said crossing of Wellington street, in the city of St. Thomas and province of Ontario.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the London and Port Stanley Railway Company for the elimination of the present watchman at the crossing of Talbot Street, St. Thomas, Ont., and the substitution of automatic flashlight signals, interlocked with the present plant of the Michigan Central Railroad-London and Port Stanley Railway immediately to the south, to be located in the centre of Talbot Street, on either side of the railway, or at such other location as may be approved by the Board.

File No. 25542.37

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The London and Port Stanley Railway Company asks for permission to replace the watchman now protecting Talbot street from 6 a.m. to midnight by signal protection operating 24 hours per day. It is proposed that this should operate in conjunction with the interlocking plant at the crossing of the London and Port Stanley Railway by the Michigan Central Railroad.

The railway desires to place the signal in the middle of the street. The fact that Moore street comes into Talbot street close to the crossing places difficulties in the way. It is proposed by the railway that a concrete pedestal be placed in the centre of Moore street around the base of the signal. Vehicles coming north on Moore street and turning west on Talbot street would be likely to run into this.

The movements on the railway are slow; it appears that automatic signals will afford ample protection and, also, additional protection during the hours from midnight to 6 a.m., when, at present, there is no protection.

The Chief Engineer recommends that the railway be authorized to install double bells and wigwags, to be located at the edge of the sidewalks; and that the railway be authorized to discontinue the watchman upon the completion of the installation. This appears justifiable.

The expense at present is \$2,200 per year, of which \$750 or 30 per cent is paid by the city and \$1,450 or 70 per cent by the London and Port Stanley Railway. The estimated cost of the signal installation is given at \$1,500 and the annual maintenance at \$180.

I am of opinion that the cost of installation and maintenance should be divided between the London and Port Stanley Railway and the city of St. Thomas, 70 per cent of the cost of installation and maintenance being borne by the former and 30 per cent by the latter. This will make a contribution by the London and Port Stanley Railway to installation and maintenance amounting to \$1,176, while the contribution of the city of St. Thomas will be \$504. The cost of installation and maintenance will, both in the case of the London and Port Stanley Railway and the city of St. Thomas, be less than the charge at present paid for watchmen.

January 16, 1933.

Commissioner Stone concurred.

ORDER No. 49408

In the matter of the complaint of the Townships of Caledon and Albion, in the County of Peel and Province of Ontario, that the Orders of the Board Nos. 47505 and 47506, dated October 9, 1931, requiring the Canadian Pacific Railway Company to appoint caretakers at Caledon and Mono Road Stations, are not being complied with, and that a reasonable and proper service is not being maintained on the line through these stations.

Files Nos. 4205.592 and 4205.591

WEDNESDAY, the 18th day of January, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, January 10, 1933, in the presence of counsel for the complainants and the railway company, and what was alleged; and upon its appearing that the line upon which the stations in question are located has been abandoned,—

It is ordered: That the complaint be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Applications of the townships of Caledon and Albion for a hearing of their complaint that the Orders of the Board requiring the Canadian Pacific Railway Company to maintain caretakers at the stations of Caledon and Mono Road are not being complied with; and that a reasonable and proper service is not being maintained on the line through these stations.

Files Nos. 4205.591 and 4205.592

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

By orders of the Board dated October 9, 1931, leave was granted to the Canadian Pacific Railway Company to remove its agents at Mono Road station and Caledon station, both situate on its Owen Sound subdivision between Bolton and Melville. Both orders were conditional upon the appointment of caretakers.

On September 24, 1931, and prior to the making of the orders in question, Mr. Flintoft on behalf of the Canadian Pacific Railway Company notified the Board that unless there was a material improvement in the earnings of this branch within the next couple of months the company would be forced to abandon its operation. Subsequently, the earnings proving unsatisfactory, the company abandoned the line.

On September 14, 1932, an application was filed with the Board on behalf of the townships of Caledon and Albion,

“for a hearing of their complaint that the orders of the Board requiring the Canadian Pacific Railway Company to maintain caretakers at the stations at Caledon and Mono Road are not being complied with, and that a reasonable and proper service is not being maintained on the line through these stations.”

To this application the Canadian Pacific Railway Company answered that the line upon which the stations in question are located had been abandoned.

The applicants question the right of the company to abandon without the authority of the Board. The company maintains that the Board has no jurisdiction to prevent abandonment.

The line of railway upon which the said stations are situated and which has been abandoned, is that portion of the old Toronto, Grey and Bruce Railway between Bolton and Melville, a distance of 19.1 miles. This company operated a line of railway from Toronto to Owen Sound via Bolton, Melville and Orangeville. The Canadian Pacific Railway Company took it over in 1881 and until recently operated trains from Toronto to Owen Sound by way of this line, and also operated trains between Toronto and Owen Sound by a line running via Streetsville and Brampton connecting with the old Toronto, Grey and Bruce line at Melville. The portion of the old Toronto, Grey and Bruce line between Toronto and Bolton is now the main line of the Canadian Pacific Railway Company between Toronto and Sudbury. The line between Bolton and Melville has a maximum grade of 2.2 per cent, and the maximum grade on the line between Toronto and Owen Sound via Brampton is 1 per cent.

In view of the fact that the earnings on the portion of the line between Bolton and Melville were entirely insufficient to meet operating expenses, the Canadian Pacific Railway Company abandoned that portion of its line and is now carrying all its traffic from Toronto to Owen Sound by way of Brampton.

On this state of facts two questions arise:—

1. Whether the Board has jurisdiction to compel the Canadian Pacific Railway Company to operate the line between Bolton and Melville, and
2. Assuming it has jurisdiction, do the facts in evidence justify an order?

It will be unnecessary to consider the second question because I am clearly of the opinion that the Board has no such jurisdiction.

In *Rossland Board of Trade v. Great Northern Ry. Co.*, 28 C.R.C. 24, this Board held that

“Unless the special act of incorporation provides that a railway shall be continuously operated, the Board has no jurisdiction to compel a company, which has discontinued the operation of its railway owing to a deficit, to resume such operation, even though the public interest is seriously affected by reason of the discontinuance.”

In the great majority of cases acts incorporating railway companies are enabling acts and do not obligate the companies either to construct or operate the whole or any portion of the projected railway.

The jurisdiction of the Board must be found within the four corners of the Railway Act and unless there is to be found in that Act some specific section, or sections, giving the Board jurisdiction to prevent the discontinuance of the operation of a railway, the Board clearly has none.

In the earlier applications the only section of the Railway Act which has been relied on is section 312, ordinarily spoken of as the facilities section. This section, however, only applies in the case of a railway that is actually in operation.

Mr. Wegenast, who appeared on behalf of the applicants, said that in the face of the decisions of the Board he could not argue that the Board had jurisdiction to prevent a railway company abandoning its whole undertaking, but he contended that it had jurisdiction to prevent a railway abandoning a portion of its line. He, however, neither cited authorities in favour of his contention, nor did he refer us to any section of the Railway Act which conferred such jurisdiction.

The case of Darlaston Local Board v. London & North Western Ry. Co., 8 Railway and Canal Traffic Cases, p. 216, appears to me a complete answer to any such contention. There the railway company discontinued passenger service on a branch line. An application was made to the Railway Commission for an order compelling the railway company to resume service. The only section relied on there to support the jurisdiction of the Railway Commissioners was section 2 of the Railway and Canal Act, 1854, which is the facilities section of that Act comparable to our section 312. The Commissioners made the order asked for. On appeal the court consisting of Lord Esher, M.R., Kay, L.J., and Smith, L.J., held that the Railway Commissioners had no jurisdiction to make the order.

It seems very clear from the above decision that where no obligation is imposed upon a railway company by Parliament to make, or having made, to maintain its line, the company is at liberty to discontinue service and abandon the whole or any part of its line at any time.

No obligation was imposed upon the Toronto, Grey and Bruce Railway Company by its act of incorporation, 31 Victoria, chapter 40, to make or maintain its line of railway, or any part of the same. Section 3 of the Act reads:—

“The company shall have full power under the Act to construct a railway from any point in the city of Toronto to the village of Orangeville, etc., etc.”

The applicants further rely on the terms of a bond dated August 26, 1869, executed by the Toronto, Grey and Bruce Railway Company. The condition of the bond reads as follows:—

“The condition of this obligation is that if the said the Toronto, Grey and Bruce Railway Company do erect and maintain on their line of railway a station at the said village of Charlestown or within one mile thereof or in case of failure in so doing if they do return to the said the Corporation of the Township of Caledon their successors and assigns the debentures so issued by them the said Corporation of the Township of Caledon as a bonus to aid in the construction on the said railway then this obligation shall be void, otherwise shall continue in full force.”

It is admitted that Caledon station was built in fulfilment of this undertaking.

In 1883, the Toronto, Grey and Bruce Railway leased the whole of its line to the Ontario and Quebec Railway Company for a period of 99 years, and the latter company in 1884 leased it to the Canadian Pacific Railway Company in perpetuity. Both leases were confirmed by an Act of the Dominion Parliament, 47 Victoria, chapter 61. By section 17 of the latter lease the Canadian Pacific Railway Company “assume all contracts entered into by the said Toronto, Grey and Bruce Railway Company in relation to operating the traffic of the said last mentioned company’s line, and of all rentals and charges in connection with any wharves, steamers, lands or other property or equipment used by, or service rendered to, the said Toronto, Grey and Bruce Railway Company, in connection with the operation of its line,—the whole as more particularly set forth in the deed of lease of the Toronto, Grey and Bruce Railway Company to the lessors hereinbefore referred to, and in the schedule thereto annexed.”

The bond relied on is not mentioned either in the deed of lease or in the schedule annexed.

The application is dismissed.

OTTAWA, January 17, 1933.

The Assistant Chief Commissioner and the Deputy Chief Commissioner concurred.

ORDER No. 49412

In the matter of the Order of the Board No. 40337, dated February 9, 1928, requiring that the crossing of Talbot Street by the London and Port Stanley Railway, in the City of St. Thomas and Province of Ontario, be protected by watchmen between the hours of 6 a.m. and 12 o'clock midnight, daily; 70 per cent of the cost of such protection to be paid by the said Railway Company and 30 per cent by the City of St. Thomas;

And in the matter of the application of the said London and Port Stanley Railway Company for permission to replace the said watchmen by automatic flashlight signals, interlocked with the present plant at the Michigan Central Railroad and London and Port Stanley Railway crossing immediately to the south, to be located in the centre of Talbot Street, on each side of the railway, or at such other location as may be approved by the Board.

File No. 25542.37

TUESDAY, the 17th day of January, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Thomas, January 9, 1933, in the presence of counsel for and representatives of the London and Port Stanley Railway Company and the city of St. Thomas, and what was alleged; and upon the report and recommendation of the Chief Engineer of the Board,—

It is ordered:

1. That, within ninety days from the date of this order, the London and Port Stanley Railway Company install double bells and wigwags at the said crossing of Talbot street, in the city of St. Thomas and province of Ontario, to be located at the edges of the sidewalks, in accordance with the "Standard Specifications for Highway Crossing Signals," approved under General Order No. 468; a detail plan showing the layout thereof to be submitted for the approval of an engineer of the Board.

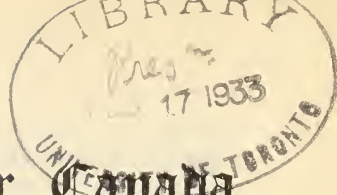
2. That the joint towerman, in handling the facilities covering the said crossing at Talbot street, shall be considered the employee of the London and Port Stanley Railway Company and the city of St. Thomas.

3. That, after the said bells and wigwags have been installed, the London and Port Stanley Railway Company may discontinue the services of the watchmen appointed under the provisions of the said Order No. 40337, dated February 9, 1928.

4. That the cost of installing and maintaining the said bells and wigwags be borne and paid seventy per cent by the London and Port Stanley Railway Company and thirty per cent by the city of St. Thomas.

S. J. McLEAN,

Assistant Chief Commissioner.



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Re Public and Private Crossings from the west boundary of the City of Ottawa to Britannia, viz., Parkdale Avenue, Ottawa, to Main Street, Britannia,—Canadian Pacific Railway.

File No.	10245—Ross Avenue, Ottawa West, Ont.
"	16675—Carleton Avenue, Police Village of Ottawa West.
"	34055—Clifton Road, Township of Nepean, Ont.
"	26727·57—Main Street, Westboro, Ont.
"	16661—Victoria Street Crossing, Westboro, Ont.
"	26727·243—Cole's Undercrossing, Township Nepean, Ont.
"	23005—Second Avenue, Township of Nepean, Ont.
"	26727·244—Earlscourt (underpass, private) Tp. Nepean.
"	34594—Clydeborne Avenue (so named in application but shown as Clyburne Avenue in City Directory) Township Nepean, Ont.
"	26727·245—Lafleur's Crossing, Township Nepean, Ont.
"	32985—Roxborough Avenue, Township Nepean, Ont.
"	9437·1054—Woodroffe Crossing, Township of Nepean, Ont.
"	12195—New Orchard Avenue Crossing, Tp. Nepean, Ont.
"	9437·341—Main Street Crossing, Britannia, Ont.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The Board has had before it the question of railway crossings west from the westerly boundary of the city of Ottawa to Britannia on the line of the Canadian Pacific Railway. Development has been taking place in the westerly part of the city and beyond the westerly boundary, which brings up the question of railway crossings. Crossings are necessary from the standpoint of those members of the public who find it necessary to cross railway tracks. It happens that in the development of the area concerned the line of the Canadian Pacific runs roughly east and west. Consideration should be given not only to the convenience but to the safety of those using the crossings.

From the standpoint of the railway, it must be recognized that every additional crossing has an element of danger. That is not to say that a crossing is dangerous in and of itself, because if people using railway crossings exercised reasonable care, the percentage of accidents would be very much reduced. But every new crossing opened affords an opportunity for those using it to act

negligently, thus creating a dangerous situation. Further, the placing of crossings too close to each other puts an obstacle in the way of railway trains maintaining their necessary and proper speeds.

The question is not to be looked at from the standpoint of one side alone. In addition to the conditions which have been sketched, there must be considered the facilities for development. If trespass crossings are allowed to come into use, conditions of settlement may be developed which may make it difficult for residents to readjust themselves to changed conditions. It has seemed proper, in so far as is feasible at the present time, that a general scheme of crossings in the territory involved should be worked out so that people residing in, or coming to reside in, the section in question will know what facilities of crossings they will have and will adjust themselves accordingly.

Applications came before the Board from time to time for crossings and it seemed well to have an inspection made by the Chief Engineer and Chief Operating Officer of the Board. These officials, accompanied by an engineer for the municipality and an engineer for the railway, made their inspection in September, 1928, and submitted their report. Copies of this, with illustrative blue prints, were submitted to the parties for their consideration. Subsequently the matter was set down for hearing. The report in question is hereinafter spoken of as "the Board's Report."

It was also apparent that any scheme of crossings involving any appreciable expenditure of money would have difficulty in being put through on account of the existing financial conditions. As, under these circumstances, it appeared that the setting out of a definite plan would be premature and of little value, the matter was allowed to stand until the further hearing which took place in November, 1932.

On Friday, July 22, 1932, further inspection was made of the crossings by the Chief Commissioner, Commissioners Norris and Stone, the Board's Chief Engineer and Chief Operating Officer, at which representatives of the municipalities and of the railway were present.

It is proposed now, following this hearing, to take up *seriatim* the recommendations of the Board's report. It is still recognized that crossing expenditures in the area in question may not, on account of disturbed financial conditions, take place for some time; but it was recognized that it would be of advantage to have the pronouncement of the Board upon the matter, setting forth at the same time that the work provided for could not be gone on with for some time. More specific details of this phase of the matter and of the necessary limitations of time are given below.

(1) *Parallel Street North of the Railway.*

The Board's report sets out, on the plan attached thereto, provision for a parallel street north of the railway. This is not implemented by specific recommendation in the report itself. The following statement from a supplementary memorandum is pertinent:—

"Referring to our report of the 25th September, 1928, it was our intention to recommend that in the subdivision of the land north of the railway between Parkdale avenue and Main street, a roadway be provided parallel to and adjacent to the railway between the said Parkdale avenue and the end of Balfour street, and we so recommend. Mr. Cauchon stated at the hearing that the Town Planning Commission would take cognizance of this when application is made for the subdivision of this land.

"(Sgd.) G.S.,
Operating Officer.

"(Sgd.) T.L.S.,
Chief Engineer."

This recommendation appears to be in the interest of the development taking place, and the Board is justified in emphasizing the importance of it being so considered.

(2) *Ross Avenue*—File 10245.

The distance between Parkdale avenue and Ross avenue is 2,250 feet. The Board's Report recommended that instead of the crossing at Ross avenue the crossing should be on Smirle avenue. This was intended to equalize the distance, reducing the distance between the crossings by 550 feet. The City of Ottawa, which is interested in the crossing, urged that the substitution of Smirle avenue for Ross avenue should not be made. It was urged by the city of Ottawa and the township of Nepean that the existing crossing at Ross avenue furnishes a more convenient method of crossing than would be available at Smirle avenue.

While the railway favoured the Board's Report, it stated at the hearing in 1929 that it was not taking strong ground, and that it was immaterial to it whether Smirle avenue was made a public crossing in the place of Ross avenue; and it was stated by counsel for the railway that if there was any strong opposition to this phase of the scheme, the railway would not insist upon it.

On consideration of the representations made, it would seem that the convenience of the public would be more adequately looked after with the crossing at Ross avenue, and that a change in this regard should not be directed.

It is to be noted that the evidence emphasized the importance of having Ross avenue open, notwithstanding the longer distance involved. This is a factor which must be borne in mind if and when application for additional crossings, if any, arise in this section.

(3) *Carleton Avenue*—File 16675.

The distance between Ross avenue and Carleton avenue is 930 feet. This crossing is mentioned in the Board's Report as part of a comprehensive scheme.

It was authorized by Order No. 13728, of May 17, 1911, which was amended by Order No. 13872, of June 6, 1911, the cost of construction and maintenance being on the municipality. It is pointed out that there are good sight lines and, in the opinion of the railway, there is no necessity for special protection. No representations as to protection being necessary were made by any of the parties.

No action is necessary.

(4) *Clifton Road*—File 34055.

The distance between Carleton avenue and Clifton road is 2,330 feet. The Board's Report sets out that between Island Park Driveway and Main street, Westboro, is a distance of 3,560 feet without a public crossing. There is, however, a private crossing at Clifton Road serving an industry. Recommendation is made that Cameron avenue be designated as the place for a public crossing.

At the hearing in 1929, counsel for the township of Nepean stated that if Mr. Mahoney, the owner of the industry in question, had his rights as to the use of the private crossing reserved "the Reeve and Council are agreed that probably Cameron avenue would be the next proper street opening."

At the hearing in November, 1932, it was set out that the Hydro-Electric Commission had created a 100-foot boulevard with towers down the centre. This boulevard is a continuation of Cameron avenue running north to the Island bridges.

Counsel for the township stated that he had discussed the situation with Mr. Mahoney, who was agreed that if, ultimately, Cameron avenue was opened, he would construct a crossing privately for himself, until such time as a registered

plan would be put upon these lands. Mr. Mahoney owns the property from Clifton road to the corner of Cameron avenue. In response to my query as to whether this would involve expenditure to the public, counsel said "No."

It is stated that there is very little development in this territory north of the track and no immediate necessity for the construction of a crossing. The parties were in agreement as to this being a point where a crossing should ultimately be constructed.

(5) *Main Street, Westboro*—File 26727.57.

The distance from Clifton road to Main street is 2,330 feet. Mr. Spicer, one of the trustees of the village of Westboro, who appeared at the hearing, took the position that protection was not necessary. The traffic is slow moving.

No action is necessary.

(6) *Victoria Avenue, Westboro*—File 16661.

The distance from Main street to Victoria avenue is 920 feet. It was stated by Mr. Spicer that the view at Victoria avenue was a reasonable one. He did not think any good reason had been shown why wigwag protection should be installed. Question was raised regarding the removal of trees obstructing the view. Counsel for the railway pointed out that some improvement had been made since the last hearing of the Board, this following the recommendations made by the Board's Inspector. Mr. Spicer stated that the view had been improved by the action taken.

At the hearing in November, 1932, it was stated that the matter would be taken up by the Board's Engineering Department. The report of the Board's Assistant Chief Engineer, dated January 17, 1933, reads as follows:—

"*File 16661—Re Highway Crossing, Victoria Street, Westboro, Ont., situated between Ottawa and Main Street, Britannia.*

"On the 13th instant, I made an inspection of the above crossing as to the question of removal of trees at the crossing, on which it was stated that there were trees that interfered with the view to approaching trains. Attached herewith is a plan showing the crossing.

"On inspection, I find that all the trees have been removed. The branches of the trees on the northwest angle have all been cut off, and these now do not interfere with the view. The few scrub trees on the southwest angle near the house as shown on the plan do not interfere with the view.

"The view to approaching trains as it now stands at the crossing is good, and I am of the opinion that no further work in this connection is necessary."

No action necessary.

(7) *Cole's Undercrossing, Tp. Nepean*—File 26727.243.

The distance between Victoria avenue and Cole's crossing is 1,430 feet. The crossing is purely a private one and no action is necessary.

(8) *Second Avenue, Tp. of Nepean*—File 23005.

The distance between Cole's crossing and Second avenue is 1,130 feet. This crossing was opened by Order No. 21445, of March 14, 1914, the cost of construction and maintenance being on the municipality. The railway stated it had no special recommendation to make. Counsel for the township of Nepean said there was an excellent sight line and no obstruction whatever.

No action is necessary.

(9) *Earlscourt Crossing*—File 26727.244.

The distance from Second Avenue to Earlscourt Crossing is 930 feet. At the hearing in 1929, it was stated that the crossing in question was a cattle-pass and was not in general use as a private street.

No action is necessary.

(10) *Clydeborne Avenue*—File 34954; *Lafleur's Crossing*—File 21727.245; *Roxborough Avenue*—File 32985; and *Woodroffe Road*—File 9437.1054, have to be considered together.

The distance from Earlscourt crossing to Clydeborne avenue is 1,650 feet; the distance from Clydeborne avenue to Lafleur's crossing is 600 feet; the distance from Lafleur's crossing to Roxborough avenue is 800 feet; and the distance from Roxborough avenue to Woodroffe Road crossing is 520 feet.

The Board's Report makes the following recommendation regarding these crossings:—

“Applications have been made by the municipality for authority to construct public crossings at Clydeborne avenue and Roxborough avenue, at which points there are crossings which have never been legalized. About midway between these two there is another private crossing called Lafleur's. Roxborough avenue is about 520 feet from the Woodroffe Road crossing, so there is no good reason for a crossing at this point. A public crossing appears necessary at Clydeborne avenue, and we are of opinion that a public crossing should be established at this point. A road allowance 33 feet wide should be established and a road constructed from Aylen avenue to Clydeborne avenue, parallel to and north of the railway, a distance of about 770 feet. This would enable people living north of the track to reach either Woodroffe road or Clydeborne avenue crossings, and Roxborough and Lafleur's crossings should be closed. At the present time, the latter cannot be closed as there are houses north of the track, and their owners have no access to the crossings at Woodroffe road or Clydeborne avenue.”

At the hearing in November, 1932 counsel for the Township of Nepean stated that since the former hearing title to a property which would give an outlet to Roxborough avenue had been obtained, which would enable people to cross to the Richmond road without the necessity of using Lafleur's crossing. The Board's Engineering Department points out that the property so acquired forms, in effect, an extension of Rice avenue to the east of Aylen avenue. In this way, the cottagers on lot 20 have access to the Richmond road, thus enabling Lafleur's crossing to be closed and obviating the necessity of constructing a parallel road north of the track between Clydeborne avenue crossing and the east end of Carleton avenue. It would appear, however, that eventually the parallel road north of the track between Clydeborne avenue and the east end of Carleton avenue should be constructed.

At the hearing in 1929, it was urged by the township of Nepean that Roxborough avenue and Clydeborne avenue were senior to the railway. It was admitted that at Roxborough avenue gates had from time to time been in place; that notices had been put up instructing the public to keep the gates closed; and that for some time there had been a sign warning the public they might use the crossing at their own risk. The crossing is not protected by whistle posts nor was it, the railway stated, protected by railway standard signs. Counsel for the railway admitted that the sign at the crossing was not the ordinary crossing sign.

Counsel for the township, in stating that there were gates on both sides of the track in 1885 continued "..... we have no evidence to show that it (the road) was open across the tracks, which, of course, would be very important for our case."

In the case of Clydeborne avenue, the township contended that there never was a farm crossing but that, instead, there had been a crossing on a private road leading to a mill. It appears that from time to time the gates at this point were closed. The witness called by the township remembers gates having been closed as far back as 1896. The land adjacent to the crossing had been owned as a pasture as far back as 1886; witness testified that when the pasture was in use the gates were closed.

The Railway Act makes no provision for private crossings. A crossing may originate as a farm crossing, or as a crossing in the nature of a farm crossing, or as a private crossing; but such crossing does not ripen by user into a public crossing. To give it that status, there must, under the circumstances summarized above, be a public sanction under the Railway Act which legalizes it.

Cases frequently arise in which a farm crossing, equipped with gates, has in time arrived at the stage where the gates are no longer operative and the farm traffic gives way to a dense suburban traffic—*City of Montreal vs. C.P.R. Co.*, 18 Can. Ry. Cas., 50; *Town of St. Pierre vs. G.T.R. Co.*, 13 Can. Ry. Cas. 1; *Denison Avenue Crossing Case, Village of Weston vs. C.P.R. & G.T.R. Cos.*, 7 Can. Ry. Cas., 79. In the latter case, the railway company put up warning signs and occasionally closed the gates inside their line. It was found by the Board that while this was done, no effective steps were taken by the railway to put a stop to the actual use of the crossing by the public, and that in fact the public had made use of same for many years. The decision of the Board authorized the applicant municipality to open the crossing at its own expense as to construction and maintenance.

In the present case, stress is laid upon the intermittent use of gates, but it appears to me that the two crossings concerned are no stronger than the *Weston Case* and that the present application is in no better position than that of a farm crossing.

I am of opinion that the recommendations contained in the Board's Report should be adopted. The cost of construction and maintenance should be on the municipality, subject, however, to the provision contained in the next paragraph.

While the railway contended that it was senior at the crossings concerned, its counsel acquiesced, after some questioning, in the suggestion that, without derogating from its rights of seniority, it might give some assistance to the work. The Board is now advised by the railway as follows:—

"If the two existing private crossings at Roxborough avenue and Lafleur's are eliminated in accordance with the recommendations contained in the Board's officials' report of September 25, 1928, this company will be prepared to make a small contribution towards the cost of the entire work, the amount, however, not to exceed the sum of \$1,200."

(11) *New Orchard Avenue Crossing*—File 12195.

The distance from Woodroffe Road crossing to New Orchard avenue crossing is 1,530 feet. No crossing is necessary, as the land is very low and not fit for development.

(12) *Main Street, Britannia*—File 9437.341.

The distance from New Orchard avenue to Main street is 5,500 feet. This crossing was opened by Order No. 21445 of March 19, 1914, the cost of construction and maintenance being placed on the municipality. No action is necessary.

Reference has been made in the course of the proceedings to the possibility of contribution from the Railway Grade Crossing Fund. The condition of that fund is such that the Board is not in a position to make any recommendation for a contribution out of it in aid of any of the works herein concerned.

As already pointed out, it is recognized that construction work involving expenditures is a difficult matter to finance at the present time. The parties were in agreement as to this; and were in further agreement that a reasonable time should be allowed before the work would be expected to be carried out. I am of opinion that, in respect of any changes recommended in the above Reasons for Judgment, a period of two years may be allowed during which the work may be completed. If conditions should arise which would seem to justify an extension of time, the Board will, of course, give consideration to the matter; at the same time, the two-year period is not set up as being the beginning of later bargainings in regard to further extensions of time.

Commissioners Norris and Stone concurred.

January 20, 1933.

ORDER No. 49458

In the matter of the application of the Corporation of the Township of Nepean, in the Province of Ontario, hereinafter called the "Applicant," under Section 256 of the Railway Act, for authority to construct highway crossings over the Canadian Pacific Railway at Roxborough Avenue and Clydeborne Avenue, as shown on the plan and profile dated April 14, 1926, on file with the Board under file No. 34594. (See also files Nos. 32985 and 26727.245.)

THURSDAY, the 26th day of January, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 26, 1929, and November 22, 1932, in the presence of counsel for and representatives of the applicant and the railway company, and what was alleged; upon an inspection by the Board of the *locus in quo*; and upon the report and recommendation of the Chief Engineer and the Chief Operating Officer of the Board,—

It is ordered:

1. That the applicant be, and it is hereby, authorized to construct a highway crossing over the Canadian Pacific Railway at Clydeborne avenue, in the township of Nepean and province of Ontario, as shown on the said plan and profile on file with the Board under file No. 34594, and in accordance with and subject to "The Standard Regulations of the Board Affecting Highway Crossings"; subject, also, to the condition that a road diversion be constructed from Aylen avenue to Clydeborne avenue, parallel to and north of the railway, a distance of about 770 feet; the work herein authorized to be constructed and completed within two years from the date of this order.

2. That the existing private crossing at Roxborough avenue and Lafleur's crossing, so-called, be closed within the limits of the railway right of way, after the construction and completion of the said crossing at Clydeborne avenue and the diversion.

3. That the cost of constructing the proposed crossing and diversion be borne and paid as follows: \$1,200 to be paid by the Canadian Pacific Railway Company and the remainder by the applicant; the cost of maintenance to be borne and paid by the applicant.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49466

In the matter of the application of the Corporation of the Township of Nepean, in the Province of Ontario, hereinafter called the "Applicant," under Section 256 of the Railway Act, for leave to construct a highway crossing over the Canadian Pacific Railway at Clifton Road, in Lot 32, Concession 1, as shown on the plan and profile dated August 11, 1925, on file with the Board under file No. 34055.

WEDNESDAY, the 25th day of January, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 26, 1929, and November 22, 1932, in the presence of counsel for and representatives of the applicant and the railway company, and what was alleged; upon an inspection by the Board of the *locus in quo*; and upon the report and recommendation of the Chief Engineer and the Chief Operating Officer of the Board,—

It is ordered:

1. That the applicant be, and it is hereby, authorized, at its own expense, to construct and maintain a highway crossing over the Canadian Pacific Railway at Cameron avenue, in the township of Nepean and province of Ontario, in accordance with and subject to "The Standard Regulations of the Board Affecting Highway Crossings"; the work herein authorized to be constructed and completed within two years from the date of this order.

2. That the private crossing at Clifton road be closed within the limits of the railway right of way, after the said crossing at Cameron avenue has been constructed and completed.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of Fort William Elevator Company, Limited, for an Order providing for the free switching of cars to and from the company's terminal elevator at Fort William, Ont., from the Canadian National Railways to the Canadian Pacific Railway and vice versa; and that the cars of one company set out for placing by the switching service of the other shall not be discriminated against.

(File No. 6713.237)

REPORT TO THE BOARD, AFTER HEARING, BY FULLERTON, CHIEF COMMISSIONER

Acting on an order of the Board dated 30th day of November, 1932, made under section 12 of the Railway Act, I heard the evidence tendered by the parties

in connection with the above application, at Winnipeg, on the 28th day of December, 1932, and beg herewith to submit my report in regard to the same.

While there is nothing in the application to indicate the grounds upon which it is based, it developed at the hearing that it is based solely upon discrimination. The applicants say that other elevators similarly situated obtain free switching from both railways, and that it is discriminatory under the circumstances to charge them switching charges.

In order to determine the validity of the applicants' claim that discrimination is being exercised against them by the railways, it is necessary to consider briefly the history of the several elevators erected at Port Arthur and Fort William.

Fort William and Port Arthur are two separate cities divided by a distance of about four miles. They are regarded, however, as constituting together one terminal.

For the purpose of this opinion, the elevators situate at these two ports may be divided into three groups—the Current River group, the Inter-City group and the West Fort William group.

The applicants' elevator is situate in the latter group, and was built about the year 1913.

The Current River group is located at Current River at the east of Port Arthur. These elevators have always enjoyed free switching from both railways. At first both the Canadian National and Canadian Pacific Railway Companies built tracks to the different elevators. There were a number of diamonds put in where the Canadian Pacific Railway crossed the Canadian National Railway. This arrangement did not work very satisfactorily and after some negotiation it was arranged that the Canadian National Railways would switch all the elevators at one end and the Canadian Pacific Railway Company all the elevators at the other end.

The applicants do not place much reliance on the arrangement made at these elevators as bearing on discrimination, the distinguishing feature here being that both railways were actually switching free to the different elevators before the arrangement above referred to was made.

The next group of elevators is the Inter-City group. They lie in Port Arthur near the boundary between the two cities. As the applicants appear to think that the arrangements between the railways for the service to these elevators has a bearing on the question of discrimination, it is necessary, briefly, to consider the history of the arrangements between the railways with reference to the same.

In 1913 the Government elevator was built on property purchased from McKenzie & Mann, and it was understood at the time of the purchase that access would be given to the Canadian Pacific Railway Company over the Canadian Northern Railway Company's Lines. On an application an Order was made by the Board on October 17, 1913, authorizing the Canadian Pacific Railway Company to operate over the spur of the Canadian Northern Railway Company into the Government elevator.

In January, 1917, Davidson & Smith, who had an elevator immediately alongside the Government elevator, applied to the Board for an order granting the Canadian Pacific Railway Company authority to use the Canadian Northern Railway Company's tracks leading to the elevator of the applicants on the same terms and conditions as governed the use of the tracks to the Dominion Government elevator. The site on which this elevator was built also was purchased from McKenzie & Mann, and Davidson & Smith alleged that at the time of the purchase it was the understanding that they should have the same railway service as the Government elevator, namely, both the Canadian Pacific Railway and the Canadian Northern Railway. On September 16, 1918, the Board made an order authorizing the Canadian Pacific Railway Company to use and operate the Canadian Northern Railway Company's spur into the applicants' elevator.

The Canadian Pacific Railway Company refused to furnish service to Davidson & Smith elevator, and on April 6, 1921, the Board made an order requiring this railway company to furnish to the applicants' elevator, under the permission granted by Order No. 27695, the same traffic facilities as the company was furnishing to the Government elevator under the permission granted by the order of the Board, No. 20593, dated October 17, 1913.

The order was based on unjust discrimination. The Board held that since the Canadian Pacific Railway Company was serving the Government elevator, it was obliged to serve the Davidson & Smith elevator which was similarly situated.

In September, 1921, the Thunder Bay Elevator Company, which had built an elevator alongside the Government elevator, applied for an Order directing the Canadian Northern Railway Company to allow the Canadian Pacific Railway Company to switch to their elevator.

On August 11, 1922, an order was made authorizing the Canadian Pacific Railway Company to operate the Canadian Northern Railway Company's spur into the applicants' elevator.

In 1922, Parrish and Heimbecker applied for and obtained a similar Order giving the Canadian Pacific Railway Company authority to use and operate the Canadian Northern Railway Company's spur line into their elevator.

Subsequently, an arrangement was made, confirmed by the Board, under which the work of serving the elevators was divided between the two railways, the Canadian Pacific Railway Company serving the elevators west of the Government elevator, and the Canadian Northern Railway Company those east of the Government elevator. The arrangement was very similar to the arrangement made at Current River.

I do not regard the arrangement under which the elevators in the Inter-City area obtain free switching as having any bearing whatever on the question of unjust discrimination. Both railways were serving these elevators, and it was merely to save inconvenience and expense necessarily involved in two railways attempting to serve a number of elevators where one railway had to cross the lines of the other, that the arrangement was made.

We now come to West Fort William, where the elevator of the applicants is situated.

At West Fort William there are two areas, namely, the Mission property and the Two Islands known as Island No. 1 and Island No. 2. Prior to 1926 the Mission property was served exclusively by the Canadian National Railways and the islands exclusively by the Canadian Pacific Railway Company. As it is in respect of the elevators situate on the Mission property and the Two Islands that any question of discrimination can possibly arise, it is important to indicate clearly their respective locations in reference to the applicants' elevator.

The Kaministiquia river flows in a northeasterly direction and runs into lake Superior near the boundary between Fort William and Port Arthur. About 13,000 feet from the mouth of the Kaministiquia river, the Mission river branches off in a southeasterly direction running into lake Superior, and to the southwest lies what is known as the Mission property.

About 9,000 feet from the mouth of the Kaministiquia river the McKellar river branches off in an easterly direction running into lake Superior, and forms what is known as Island No. 1 and Island No. 2, which are separated by McKellar river.

The applicants' elevator is situate on the north of the Kaministiquia river, and both the Mission property and Island No. 1 and Island No. 2 are situate on the south. There is a distance of about three miles between the applicants' elevator and the islands.

On the Mission property there are at present two elevators—the Grand Trunk Pacific elevator built in 1911, and the Searle elevator built quite recently. On Island No. 1 there was in 1896 the Dwyer, later called the Gillespie elevator. This was burned down about three years ago. The only other industry on either of the islands is the Canada Starch Works, which has been closed down for a number of years.

As has already been stated, up to January 25, 1926, the Canadian National Railways exclusively served the Mission property and the Canadian Pacific Railway Company Islands No. 1 and No. 2.

By an agreement in writing bearing date January 25, 1926, made between the Canadian National Railway Company and the Canadian Northern Railway Company, therein jointly referred to as “the National” of the first part, and the Canadian Pacific Railway Company and Fort William Terminal Railway and Bridge Company, thereafter referred to as “the Pacific,” the National agreed to perform the switching service on all road haul traffic originating at or destined to any point on the Mission property and moving over the lines of the Pacific, and the Pacific agreed to perform the switching service on all road haul traffic originating at or destined to any point on the said islands and moving over the lines of the National. The agreement contains the following recitals:—

“Whereas the terminal property at Fort William in the province of Ontario, known as the ‘Mission Property’ and all the railway facilities thereof, are included in the Lake Superior Branch of the Grand Trunk Pacific Railway which forms part of the Canadian Government Railways;

“And whereas the Pacific owns or controls the terminal property on Islands Numbers 1 and 2 in the said city and all the railway facilities thereon, which said islands are shown edged in green on the said Plan ‘A’;

“And whereas the Pacific is desirous of extending its terminal facilities so as to serve the said Mission and any industries now or hereafter situate thereon, and the National is likewise desirous of extending its terminal facilities so as to serve the said islands and any industries now or hereafter situate thereon;

“And whereas in order to avoid duplication and to facilitate the movement of grain and other traffic, the parties hereto have agreed to operate their said terminal properties in conjunction, the one with the other, upon and subject to the terms and conditions hereinafter contained;”

Under this agreement a provision was made for adjusting the cost of service as between the respective railways, but no charge was to be made against the trade.

In my view, the only ground upon which the applicants can found any claim of unjust discrimination is upon the fact that under this agreement the industries on both the Mission property and Islands Nos. 1 and 2 receive free switching service. The application is really directed against the Canadian Pacific Railway Company, and the applicants say in effect—you deliver cars on which the Canadian National Railways have the road haul from the interchange to the Two Islands without any charge, but on all such cars delivered from the same interchange to our elevator you charge regular switching charges. This undoubtedly creates a preference or advantage to the industries on the islands as against the applicants’ industry, but is it an undue or unreasonable preference or advantage? Section 316, subsection 3, of the Railway Act provides that no company shall

- “(a) make or give any undue or unreasonable preference or advantage to, or in favour of any particular person or company, or any particular description of traffic, in any respect, whatsoever;
- “(c) subject any particular person, or company, or any particular description of traffic, to any undue, or unreasonable prejudice or disadvantage in any respect whatsoever;”

It is not all “preferences or advantages” which fall within the inhibitions of the statute; only such as are undue or unreasonable. No definition of what constitutes undue or unreasonable preference or advantage is given in the statute, nor does the statute give us any guide for its determination. The reported cases help us very little. The fact that there is in a given case a preference or advantage does not of itself show that such preference or advantage is undue or unreasonable.

It appears to me in determining this question the interests of all parties must be given consideration. Here we have two neighbouring industrial areas, one served exclusively by the Canadian National Railways and the other exclusively by the Canadian Pacific Railway Company. Each railway is desirous of obtaining access to the area of the other, in order that each may deliver its line haul cars direct to the industry in these areas without the necessity of calling on the other for interswitching services. It is quite practicable to bring this about by the expenditure of the necessary money, but in order to avoid this expenditure an agreement is arrived at, such as the one in question here, whereby each agrees to switch the other's cars without charge against the trade. The practical result of the agreement is exactly the same as if each railway had gone to the expense of providing its own facilities. Had this been done, the industries on both the Mission property and the Two Islands would have free switching and the applicants would have nothing to complain of. Because free switching is brought about by the agreement between the parties, the applicants claim that this amounts to unjust discrimination. If the applicants are correct in their view that the working out of the agreement in question amounts to unjust discrimination against themselves, then it must follow that no matter how great the necessity for avoiding duplication of facilities may be the two railways are never at liberty to make an arrangement of this sort without giving every other industry in the port served by one railway the right to call upon the other railway for free switching.

I cannot think for a moment that the statute was ever intended to have such an effect and I hold as a fact that the furnishing of free switching to the industries on the Mission property and the Two Islands did not give any undue or unreasonable preference or advantage to or in favour of the industries so served as against the applicants.

I would dismiss the application.

Respectfully submitted,

The Assistant Chief Commissioner, the Deputy Chief Commissioner, and Commissioners Norris, Stoneman and Stone concurred.

OTTAWA, January 24, 1933.

ORDER No. 49464

In the matter of the application of the Fort William Elevator Company, Limited, hereinafter called the "Applicant," for an Order providing for the free switching of cars to and from the Applicant's terminal elevator at Fort William, Ontario, from the Canadian National Railways to the Canadian Pacific Railway and vice versa; and that the cars of one company set out for placing by the switching service of the other shall not be discriminated against.

File No. 6713.237

THURSDAY, the 26th day of January, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*F. A. LABELLE, *Deputy Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*

The evidence in this application having been heard at Winnipeg, December 28, 1932, by the Chief Commissioner, appointed under section 12 of the Railway Act, in the presence of counsel for the applicant, the Canadian Pacific Railway Company, and the Canadian National Railways, the said Chief Commissioner having reported to the Board, and the said report having been adopted,—

It is ordered: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

In the matter of the apportionment of the cost of the work done by the utility companies in connection with the construction of the new station of the Canadian National Railways in Hamilton, Ontario.

File No. 23009.1

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

Applications of the several utility companies to be reimbursed by either the Canadian National Railways or the city of Hamilton for expenses incurred by them in the alteration of their facilities to meet the changed conditions brought about by the erection of the new Canadian National Railways' station at Hamilton were heard together at Ottawa on the 12th and 13th days of January, 1933.

The Canadian National Railway running through Hamilton, formerly the Grand Trunk Railway, was built in the fifties. From east to west it crossed Mary, Catherine, John, Hughson, James, McNab and Bay streets, through a cut averaging in depth from 20 to 33 feet. At each of these streets the highway was carried over the railway by means of bridges. The old station was located opposite the north end of Caroline street about 1,800 feet west from James street, and it was proposed to build the new station and yards on the south side of the right of way near Hughson street.

On June 2, 1928, the Canadian National Railways applied to the Board for approval of the location of the new station in accordance with plans submitted. These plans involved the reconstruction of bridges at Bay, James, John

and Mary streets, the closing of McNab, Hughson and Catherine streets, and the acquisition for terminals of all that portion of Stuart street lying between John street and a short distance west of McNab street. In carrying out the work a large amount of excavation between the railway on the north and Stuart street on the south had to be done.

The order of approval issued on the 19th day of June, 1928.

On the 10th day of April, 1928, an agreement was made between the city of Hamilton and the Canadian National Railways which contains the following clause relating to the public utilities:—

“6. The city will upon the request of the Chief Engineer of the Railway reconstruct, alter or divert its sewers and water mains and such other municipal services at present occupying the streets within the limits of the works, and will also order all other public utilities, including the Dominion Power and Transmission Company, Limited, and its subsidiaries, the Bell Telephone Company of Canada and any other public utility or utilities to reconstruct, alter or divert their plant, tracks, etc., within the said limits of the works. The apportionment of the cost of such reconstruction, alterations or diversions shall as between the parties hereto and the said public utilities be left to the decision of the Board of Railway Commissioners for Canada.”

At the opening of the sittings counsel for the city announced that the city and the Canadian National Railways had come to an agreement regarding the apportionment of costs between themselves. The only matters left for determination by the Board are the amounts payable to the different Public Utility Corporations and by whom—whether the city or the railway—the several sums so found are to be paid.

I will deal with them in the order they were taken at the hearing.

THE BELL TELEPHONE COMPANY OF CANADA

Prior to the work of reconstruction, the company had a cable on Hughson street from Murray street, which is south of and parallel to Stuart street, to Strachan street, which is immediately north of the railway right of way.

The cable had to be removed to enable construction at Hughson street to be proceeded with. In order to maintain telephone service the Bell Telephone Company installed a cable from the corner of Hughson and Murray streets along Murray street to McNab street, thence along McNab street northerly across the railway to Strachan street and east on Strachan street to Hughson street.

Eventually, when the James street bridge was reconstructed, the portion of the line from James street to McNab street along McNab street to Strachan street, and along Strachan street to James street was removed and the connecting line carried from Murray to Strachan street across the James street bridge.

The Bell Telephone Company claims to recover the cost of these changes in its plant.

Much discussion took place at the hearing respecting the status of the bridges which carry the several streets over the railway. Mr. Beullac, on behalf of the Bell Telephone Company, argued that when the railway cut away a portion of a highway and replaced it with a bridge the latter became for all purposes an integral portion of the highway. He further argued that the rights which his company had in the location on such a bridge are rights in land which on the principle of the *City of Toronto v. Consumers' Gas Company*, 1916, 2 A.C. 618, cannot be interfered with.

It is rather difficult to follow the argument that the right to carry a wire across a bridge constitutes an interest in land.

Such a bridge clearly is not for all purposes a part of a highway and as such subject to all the incidences of a highway. The bridge is built by the

railway company and remains their property. The railway company is bound to keep the bridge in repair and when it becomes unsuitable for the traffic must replace it by a bridge sufficient for the then requirements. *City of Hamilton v. Canadian Pacific Ry. Co.* 25 C.R.C. 379.

True the above decision also holds that as a general principle when a railway excavates and cuts away a portion of the highway, it should replace that highway by a substructure capable of carrying everything which the earth originally could carry, and with the same covering or surfacing which existed when the highway was severed, but that any paving or surfacing required to take care of the traffic should be provided by the municipality.

Further, no alteration or changes can be made in the bridge without the order of the Board of Railway Commissioners. See section 251 of the Railway Act.

Mr. Beullac further rests his claim to the legal right to carry wires over the bridge on section 3 of the Act incorporating the Bell Telephone Company, chapter 67, 43 Victoria (Dominion). This section reads:—

“The said company may construct, erect, and maintain its line or lines of telephone along the sides of and across or under any public highways, streets, bridges, water-courses or other such places, or across or under any navigable waters, either wholly in Canada or dividing Canada from any other country, provided the said company shall not interfere with the public right of travelling on or using such highways, streets, bridges, water-courses or navigable waters;”

It is more than doubtful if the words “public highways, streets, bridges” include a bridge of the character of the one in question.

In any event any legal rights conferred by the above section are subject to section 372 of the Railway Act, which enacts as follows:—

“1. Lines, wires, other conductors, or other structures, or appliances for telegraphic or telephonic purposes . . . shall not, without leave of the Board, except as provided in subsection five of this section, be constructed or maintained

“(a) along or across a railway, by any company other than the railway company owning or controlling the railway;

“3. The Board may grant the application and may order the extent to which, by whom, how, when, on what terms and conditions and under what supervision, the proposed works may be executed.

“5. Leave of the Board under this section shall not be necessary . . . when works have been or are to be constructed or maintained by consent and in accordance with any general orders, regulations, plans or specifications adopted or approved by the Board for such purposes.”

When the Bell Telephone Company desired to cross at Hughson street in 1913 it applied to the Grand Trunk Railway Company for permission to cross, and an agreement dated the 17th day of July, 1913, was entered into whereby the Grand Trunk Railway Company “consents to said crossing” and the Bell Telephone Company “hereby agrees to observe, perform and abide by the said terms and conditions set forth in the said orders of the Board of Railway Commissioners.”

The agreement is founded on no consideration and conveys no interest in land. The effect of it is, in my judgment, merely to create a licence which is revokable at any time by the licensor.

Whether I am right in this conclusion or not, I am unable to see the justice of requiring a railway company, over whose bridge built and maintained at its

own expense, a utility corporation is given the privilege without cost of passing its wires, to recoup the corporation for expenses incurred by reason of alterations in or removal of that bridge.

I think the company is entitled to recover for the loss of its line on Hughson street from the south end of the bridge to the corner of Hughson and Murray streets, but from that point it must itself bear the cost of the temporary line, and of the permanent line along James street as well as the cost of the removal of its line from Hughson street bridge. The company will recover for the loss of its line from the north end of Hughson street bridge to the corner of Hughson and Strachan streets.

The Bell Telephone Company also claims that it had to remove one pole, one anchor and one stretch of cable and replace an anchor on Catherine street south of Murray street. The plan filed by the company does not indicate that this change was in any way caused by the station work. Unless satisfied that such is the case this claim will not be allowed.

The claim of the company for removal of poles at John street is allowed as this clearly was required by reason of the widening of the cut.

THE HAMILTON STREET RAILWAY COMPANY

The railway first crossed James street in 1872. Before the reconstruction of the bridge at James street the company had two tracks across the bridge. The lines affected by the reconstruction of the bridge are the lines on James and Stuart streets. Formerly the line ran north and south on James street with a branch on Stuart street to the old Canadian National Railways' station. When the James street bridge was taken out preparatory to reconstruction, traffic across the bridge had to be discontinued and a cross-over put in at the north end of the bridge. On account of the removal of the portion of Stuart street between McNab street and James street it became necessary to temporarily relocate the Stuart street line over private property belonging to the Canadian National Railways in order to furnish service to the old station.

This was done by taking up some of the track on James street and moving the turnout farther south.

This work was caused by the elimination of Stuart street between James street and McNab street as a highway, and for the cost of the work the company is entitled to recover.

The company also claims the cost of replacement of its feeder wires. Formerly these wires ran south from the line of the Hamilton Cataract Company on John street thence west on Stuart street. The excavation required the removal of these wires, and the company erected a new line along Catherine street to Barton street and west on Barton street to James street. For this work the company is entitled to recover.

The Hamilton Street Railway Company also claims to recover all the cost of removing its equipment from the James street bridge and replacing it on the new bridge. The company paid no portion of the cost of construction and maintenance of the old bridge. No authority for crossing this bridge was proved other than what may be derived from its franchise from the city authorizing the company to operate on James street.

Whatever may be said about the old bridge it is clear from section 252 of the Railway Act that the company cannot operate across the new bridge without leave of the Board.

In my view the Hamilton Street Railway Company should bear its own cost of removing its plant from the old James street bridge and replacing it on the new bridge. The cost of the cross-over north of the bridge and of the special work at the corner of Barton and Birch streets which was necessary for the rerouting of its cars, must also be borne by the Hamilton Street Railway Company.

THE HAMILTON CATARACT POWER, LIGHT AND TRACTION COMPANY

This company supplied power to the Hamilton Street Railway.

By an agreement between it and the Grand Trunk Railway Company dated December 20, 1897, the former company was given the right to erect a line of poles for carrying power lines along the north side of the right of way of the Grand Trunk Railway. The consideration for this agreement was the supply of electric current to the Grand Trunk Railway Company.

Mr. Fairlie, called by the company, explains its claim for compensation thus:—

“The intersecting streets that were bridged over the cut of the Canadian National Railways had their grades altered to such an extent that the intersecting crossings had to be raised, which necessitated certain revisions, and rather than possibly revise the pole in place the pole was moved back and the span increased, which permitted a greater width of roadway, as well as lifting the wires to a greater height to permit of the raising of the approaching intersecting streets. That was one important point. The power line was intended to have been a 35-foot lead as it is known, and that specified in the original agreement.

“Then there was another point. As the work progressed there were certain temporary changes made necessary to take care of the temporary diversions and works of the Canadian National, that did not permit of a direct transfer from the original location to the final location, but to an intermediate position that required later revision when the Canadian National Railways had their permanent works completed.”

In some cases the length of the poles had to be increased.

Section 7 of the agreement provides as follows:—

“The said poles, wires and cables are to be placed and maintained at the sole cost and expense of the Cataract Power Company, and are to be so placed and maintained as not to interfere in any way whatever with the telegraph lines or train service of or upon the Grand Trunk, and the said poles shall be moved by the Cataract Power Company at its own cost, to such other sites as may be directed from time to time by the said engineer whenever the Grand Trunk considers any changes necessary from time to time for its requirements, obligations or purposes;”

The Cataract Power Company under the above provision is not entitled to recover the costs occasioned by the removal of its equipment either to temporary or permanent locations. It is entitled to recover for any changes in the character of its equipment made necessary by the works of the Canadian National Railways. For example: when it became necessary to lengthen poles in order to carry its lines over the elevated approaches to the bridges, it should be entitled to recover the extra cost of such poles.

The company further claims for a change in its 13,000-volt transmission line. Originally it was located on McNab street and Barton street, but owing to the increased width of the cut at McNab street it was found impracticable to span it, and it was decided to relocate the line along the north side of the right of way between McNab and Bay streets and thence west along Bay street to a connection with the original line. For this work the company is entitled to recover.

The only other claim of this company is for the removal of a line on Stuart street between James and McNab streets and replacement on McNab street. The plan does not show replacement on McNab street. If, however, this was found necessary by reason of the elimination of Stuart street it should be allowed.

THE UNITED GAS AND FUEL COMPANY

This claim may be divided into two parts:—

- (1) Claim for pipe line abandoned on Stuart street.
- (2) Claim for pipe lines removed at the south ends of Mary, James, McNab and Bay street bridges.

As to the first claim, this line of pipe had to be abandoned owing to the elimination of Stuart street. The claim is for the replacement cost of the pipe. The company is entitled to recover for this item, but the amount must be determined by the Engineer.

As to the second claim. The company is not entitled to recover in respect of removal of pipe on the old bridges and replacement of an equivalent length on the new. It is, however, entitled to recover for pipe which had to be abandoned on account of the widening of the cut.

THE HAMILTON HYDRO-ELECTRIC SYSTEM

The first claim is for a manhole and underground ducts on James street immediately south of the old bridge which were destroyed by the excavation. The claim is allowed.

The company had a power line across the right of way at Bay street with a span of approximately 160 feet. As a result of the wider excavation the line had to be rebuilt with a 300-foot span, which involved rebuilding the line from Strachan to Murray street. This claim is allowed.

At McNab street near Stuart street the company was obliged to dead-end its line and install new anchors. This claim is allowed.

At Hughson street the company had an overhead primary line which went across the old excavation, which had to be rearranged in order to provide for a longer span on account of the new track arrangement. The cost of this relocation is allowed.

At John and Catherine streets they removed the span across the excavation and charged only for new anchors, which is allowed.

THE MANUFACTURERS' NATURAL GAS COMPANY

This company had a pipe line running across the old Catherine street bridge. Its line had to be taken down and relocated further west, crossing under the tracks. There is nothing to show by what authority the company originally crossed with its pipe line.

Mr. Sieger, the manager of the Dominion Natural Gas Company, which did the construction work for the Manufacturers' Natural Gas Company, says that the line was constructed in 1906, probably under an oral agreement between the gas company and the railway company.

As a result of the excavation the company lost its line on the south side of the right of way from the point marked "valve" on exhibit 17, to the point marked "Face of the retaining wall," and on the north side from the point marked "Face of the ballast wall" to a point 28 feet distant north. This loss will be allowed, but I allow nothing for the pipe line on the bridge.

When the amounts due the several utility companies are ascertained they shall be recoverable from both the city of Hamilton and the Canadian National Railways. If the latter cannot agree on the apportionment of the amount as between themselves, either of them may apply to the Board.

The Assistant Chief Commissioner and Commissioner Norris concurred.

OTTAWA, January 30, 1933.

ORDER No. 49488

In the matter of the Order of the Board No. 40949, dated June 19, 1928, (a) approving the location of the Canadian National Railway Company's passenger station in the City of Hamilton; and (b) authorizing the company to construct its tracks along and across certain streets and to reconstruct the bridges at Bay, James, John, Catherine, and Mary streets, in the said city;

And in the matter of the application of The Bell Telephone Company of Canada, the United Gas & Fuel Company of Hamilton, Limited, the Hamilton Street Railway Company, the Hamilton Cataract Power, Light & Traction Company, Limited, the Hamilton Hydro-Electric System, and the Manufacturers' Natural Gas Company for an Order directing the Canadian National Railway Company, or the City of Hamilton, to reimburse the applicants for expenses incurred in the alteration of their facilities, necessitated by the work involved under the said Order No. 40949.

File No. 23009.1

WEDNESDAY, the 1st day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, January 12 and 13, 1933, in the presence of counsel for the Bell Telephone Company of Canada, the City of Hamilton, the Canadian National Railway Company, the Hamilton Street Railway Company, the Hamilton Cataract Power, Light and Traction Company, Limited, the United Gas and Fuel Company of Hamilton, Limited, and the Hamilton Hydro-Electric System, and what was alleged,—

It is ordered:

1. That the Bell Telephone Company of Canada be reimbursed for the expenses incurred by it in connection with the loss of its lines on Hughson street, in the said city of Hamilton, from the south end of the Hughson street bridge to the corner of Hughson and Murray streets, and from the north end of the Hughson street bridge to the corner of Hughson and Strachan streets; and that the said company shall bear and pay the cost of the temporary line, and of the permanent line along James street, as well as the cost of the removal of its line from the Hughson street bridge; the said company to be reimbursed for the removal of the poles at John street.

2. That the Hamilton Street Railway Company be reimbursed for the expenses incurred by it in connection with the relocation of its line by reason of the removal of the portion of Stuart street between McNab and James streets as a highway, and for the cost of the replacement of its feeder wires along Catherine street to Barton street and west on Barton street to James street; and that the said company bear and pay the cost of removing its plant from the old James street bridge and replacing it on the new bridge, as well as the cost of the crossover north of the bridge and of the special work at the corner of Barton and Birch streets.

3. That the Hamilton Cataract Power, Light and Traction Company, Limited, be reimbursed for the expenses incurred by it in connection with any changes in the character of its equipment made necessary by the works of the Canadian National Railway Company, such as any extra cost of poles required to be lengthened in order to carry the lines of the Hamilton Cataract Power,

Light and Traction Company, Limited, over the elevated approaches to the bridges; and that the said company be reimbursed also for the work of relocating its 13,000-volt transmission line along the north side of the railway right of way between McNab and Bay streets and thence westerly along Bay street to a connection with the original line. If it is found that the removal of the company's line on Stuart street, between James and McNab streets, and its replacement on McNab street, was made necessary by reason of the elimination of Stuart street, the said company shall be reimbursed for the cost of this work.

4. That the United Gas and Fuel Company of Hamilton, Limited, be reimbursed for the loss of its pipe line on Stuart street, the amount of which shall be determined by an Engineer of the Board, and also for expenses incurred, on account of the widening of the cut, for any of its pipe line abandoned at the south ends of Mary, James, McNab and Bay street bridges.

5. That the Hamilton Hydro-Electric System be reimbursed for the loss incurred by it in the destruction of a manhole and underground ducts on James street immediately south of the old bridge, for the cost of replacing a power line across the railway right of way on Bay street, from Strachan street to Murray street, for the cost of the installation of new anchors at McNab street near Stuart street, for the cost of the rearrangement of the overhead primary line on Hughson street, and for the cost of new anchors on John and Catherine streets.

6. That the Manufacturers' Natural Gas Company be reimbursed for the loss of its pipe line on the south side of the railway right of way on Catherine street, from the point marked "Valve" on exhibit 17 on file with the Board, to the point marked "Face of the retaining wall," and on the north side of the right of way from the point marked "Face of the ballast wall," to a point twenty-eight feet distant in a northerly direction.

7. That when the amounts due the utility companies herein referred to are ascertained they shall be recoverable from both the city of Hamilton and the Canadian National Railway Company. If the city and the railway company cannot agree on the apportionment of the amount as between themselves, either of them may apply to the Board.

C. P. FULLERTON,
Chief Commissioner.

Complaint of the McKillop, Logan & Hibbert Telephone Company, Ltd., re alleged breach of agreement with the Bell Telephone Company.

File 3839.102

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under Order No. 36981, of October 26, 1925, the Board approved an agreement between the Bell Telephone Company of Canada, hereinafter called the Bell Company, and the McKillop, Logan & Hibbert Telephone Company, hereinafter called the McKillop Company, in respect of an agreement of interchange of telephone service between their respective subscribers.

From the submissions made, it appears that beginning April 1, 1918, the McKillop Company rendered telephone service to John Rudolph, a resident of the township of Logan and now clerk of the said township. It is represented that on December 1, 1927, a meeting of the directors of the McKillop Company considered an application made by John Rudolph for consent to the furnishing

to him of service by the Bell Company. The McKillop Company states that it consented to the granting of the furnishing of the desired service by the Bell Company on consideration that Rudolph retained the service of the McKillop Company. It is further set out that on December 1, 1931, Rudolph, after notice given to the McKillop Company to remove its telephone, summarily cut the connecting wires and has since refused to take the service of the said company.

The McKillop Company has notified the Bell Company that the conditions on which the consent referred to was granted (namely that Rudolph retain his service with the McKillop Company) have not been lived up to and, therefore, the consent has been withdrawn. The McKillop Company has requested the Bell Company to remove its telephone and discontinue the service, in as much as the continuance of this service constitutes competition with the service of the McKillop Company, contrary to the provisions of the agreement.

The Bell Company states that it was not anxious to furnish service to Rudolph, as this would involve the construction of a new pole line for a considerable distance. After some time, Rudolph furnished the Bell Company with a copy of a resolution passed by the directors of the McKillop Company reading as follows:—

“THE MCKILLOP, LOGAN & HIBBERT TELEPHONE COMPANY, LIMITED.

“STAFFA, ONT.,, 193...

“*Copy of Motion—*

“Moved by John Murray

“Seconded by Patrick Feeney—

“That the Board of Directors agree to allow Mr. John Rudolph, Jr., of West $\frac{1}{2}$ Lot 29, Con. 5, Logan Tp., to obtain a Bell Telephone service, Mr. Rudolph agreeing to retain the Dublin Telephone service while he continues to be Clerk of Logan.

“Carried.

“Extract from Minutes bearing date December 1, 1927.

“ (Sgd.) A. A. COLQUHOUN.”

On the strength of this resolution, the Bell Company went to the expense of constructing a pole line for the purpose of furnishing service to Rudolph. The McKillop Company complains that the furnishing of this service amounts to a breach of the agreement between it and the Bell Company. It says that the resolution above recited was a consent conditional upon Mr. Rudolph retaining its service. The resolution does not so state. The two matters are quite separate and distinct. The directors, on the one hand, agree to allow Rudolph to obtain Bell Company service. Rudolph, on the other hand, agrees to retain the McKillop Company's service while he continues to be clerk of Logan. Whether Rudolph carries out his agreement or not is a matter entirely between him and the McKillop Company. The Bell Company put in the service on the faith of the consent of the McKillop Company, who cannot now be heard to complain that the furnishing of such service amounts to a breach of contract.

The application is dismissed.

The Chief Commissioner concurred.

February 6, 1933.

ORDER No. 49503

In the matter of the agreement, dated October 5th, 1925, between the Bell Telephone Company of Canada and the McKillop, Logan & Hibbert Telephone Company, Limited, approved by Order No. 36981, dated October 26th, 1925;

And in the matter of the complaint of the said McKillop, Logan & Hibbert Telephone Company, Limited, against alleged breach of the said agreement.

File No. 3839.102

TUESDAY, the 7th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed on behalf of the Bell Telephone Company of Canada and the McKillop, Logan & Hibbert Telephone Company, Limited,

It is ordered: That the complaint be, and it is hereby, dismissed.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 49389

In the matter of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); the Maritime Freight Rates Act (R.S.C. 1927, Chapter 79); and in the matter of the Case stated by the Board for the Opinion of the Supreme Court of Canada.

File No. 34822

SATURDAY, the 14th day of January, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

It is ordered: That copies of the Stated Case in the above matter, referred by the Board under section 43 of the Railway Act, for the opinion of the Supreme Court of Canada, be served upon the Attorney General of Canada, the Attorney Generals of the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Quebec, the Boards of Trade of the cities of Saint John, Halifax, and Sydney, the Canadian National Railways, Canadian Pacific Railway Company, Dominion Atlantic Railway Company, Cumberland Railway and Coal Company, Sydney and Louisburg Railway Company, Maritime Coal and Railway Company, Temiscouata Railway, Canada Gulf Terminal Railway Company, Canadian Manufacturers' Association, Nova Scotia Apple Shippers' Association, Limited, Nova Scotia Fruit Growers' Association, Nova Scotia Farmers' Association, United Fruit Companies of Nova Scotia, Limited, New Brunswick Fruit Growers' Association, New Brunswick Apple Exchange, Limited, New Brunswick Orchards, Limited, and New Brunswick Seed Potato Growers' Association.

C. P. FULLERTON,

Chief Commissioner,

ORDER No. 49443

In the matter of the application of the Central Vermont Railway Company, under Section 323 of the Railway Act, for approval of a by-law, dated December 6, 1932, authorizing H. A. Carson, General Freight Agent, and J. L. Dempsey, Assistant General Freight and Passenger Agent of the Company, or either of them, to prepare and issue from time to time freight tariffs of the tolls to be charged for all traffic carried by the Company upon its railways, or in its vessels; and authorizing also T. E. Pringle, General Passenger Agent, and J. L. Dempsey, Assistant General Freight and Passenger Agent of the Company, or either of them, to prepare and issue from time to time passenger tariffs of the tolls to be charged for all traffic carried by the Company upon its railways, or in its vessels.

File No. 1036

TUESDAY, the 24th day of January, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said by-law dated December 6, 1932, on file with the Board under file No. 1036, be, and it is hereby, approved; and that Orders Nos. 207, 12348, 13948, 27451, and 29783, dated respectively October 27, 1904, November 21, 1910, June 14, 1911, July 19, 1918, and June 17, 1920, made herein, be rescinded.

C. P. FULLERTON,
Chief Commissioner,

ORDER No. 49447

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company," for permission to correct a printer's error in publishing a rate on apples from the Cornwallis Branch to Halifax, for export, upon one day's notice.

File No. 34822.13

THURSDAY, the 26th day of January, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, through printer's error, the proper rate was not shown on apples, in carloads, from the applicant company's Cornwallis Branch, in Tariff C.R.C. No. 875,—

It is ordered: That the applicant company be, and it is hereby, permitted to issue and file a supplement to its Tariff C.R.C. No. 875, changing the car-load rate on apples from its Cornwallis Branch to Halifax, for export, to 28 cents per 100 pounds, upon one day's notice.

C. P. FULLERTON,
Chief Commissioner,

ORDED No. 49512

In the matter of Section 375, subsection 2, of the Railway Act, and of the tariffs of the Canadian Pacific Telegraph Company, the Canadian National Telegraphs, the Great Northern Telegraph Company, the White Pass & Yukon Telegraph Company, and the Canadian Marconi Company, on file with the Board at the date hereof.

File No. 10041.120.

TUESDAY, the 7th day of February, A.D. 1933.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

The Board Orders: That all the tariffs, supplements, revised sheets, and circulars filed with the Board at the date of this order by the—

Canadian Pacific Telegraph Company,
Canadian National Telegraphs,
Great Northern Telegraph Company,
White Pass & Yukon Telegraph Company, and
Canadian Marconi Company,

be, and the same are hereby, approved as of the respective dates of the filing thereof.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF
NOVEMBER, 1932

Railway Accidents149, with 11 persons killed and 143 injured.
Railway Accidents at highway crossings 23, with 8 persons killed and 30 injured.

	172	19		173
			Killed	Injured
Passengers..			—	8
Employees..			4	118
Others..			15	47
			19	173

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NOVA SCOTIA

- 1 Automobile—Ran into side of train. N.B. licence W-4376.

QUEBEC

- 3 Automobile—Auto driver failed to stop for crossing. Quebec licences 110-008;
80376; F-15626.
1 Auto truck—Quebec licence 17983.
1 Pedestrian.

ONTARIO

- 5 Automobile—Ran into side of train. Ontario licences FL-227; AZ-688; D-1428;
U-4876; P-1-622-C.
1 Automobile—Excessive speed of auto. Ontario licence Z-2399.
4 Automobile—Ont. licences, 3457-C; 50-272-C; 20164-C; N.Y. licence 1E-37-64.

MANITOBA

- 3 Automobile—Manitoba licences, 53-602; 22229; T3-499.

SASKATCHEWAN

- 1 Automobile—Ran into side of train. Saskatchewan licence 8-800.
1 Automobile—Saskatchewan licence 74-896.

ALBERTA

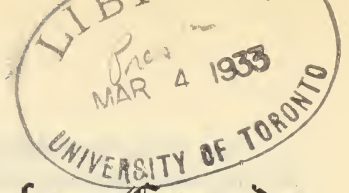
- 1 Auto truck—Alberta licence T-12751 .

BRITISH COLUMBIA

- 1 Automobile—British Columbia licence 53011.

Of the 23 accidents at highway crossings, 21 occurred at unprotected crossings and 2 at protected crossings. Sixteen of the accidents occurred during the daylight hours and 7 at night.

OTTAWA, February 6, 1933.



The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXII

Ottawa, March 1, 1933

No. 27

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Application of the Richelieu Corporation, Montreal, Quebec, re handling of export cattle through their lairage when exported via Montreal, Saint John, Halifax, or Portland.

(Files Nos. 6713.239 and 38540)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

The applicants conduct a lairage for export cattle on Bickerdike wharf in the city of Montreal. They asked the intervention of the Board to bring about the following conditions:—

1. That their lairage be placed on the same basis as other stock yards in Montreal, meaning thereby the stock yards of the Canadian National and Canadian Pacific Railway Companies.
2. That traffic originating on the Canadian National Railways' lines for export from Saint John and Halifax be handed over to the Canadian Pacific Railway Company at Montreal.
3. That the Canadian National Railways perform free of charge: (a) switching service from the Bickerdike pier to any other pier in Montreal, including absorption of the switching charge of the Montreal Harbour Commission; (b) switching from Point St. Charles to Bickerdike pier and return when the cattle are consigned to Saint John, Halifax, or Portland for export.

From the evidence it is clear that when the lairage was first established on Bickerdike pier the applicants expected the steamers to call there and take delivery of cattle. Mr. McDonnell, one of the directors of the applicant company, was asked the following questions on cross-examination and made the following answers:—

"Q. Your main object in establishing this lairage in the Bickerdike pier was to eliminate two handlings in Montreal and load direct to the ship?—A. Yes.

"Q. When you had established the lairage you found that the ships would not call at your pier?—A. No."

The refusal of the ships to call at Bickerdike pier placed the applicants in an extremely awkward position.

The Canadian Pacific Railway Company has adequate facilities for the feeding, watering, and resting of live stock at its East End Cattle Market, which is directly tributary to its main line leading to the harbour and conveniently located for the handling of live stock passing over its line. Bickerdike pier is so located that it cannot be served directly by the Canadian Pacific Railway Company. Live stock arriving over the Canadian Pacific Railway and destined to that pier has to be transferred to the Canadian National Railways at Jacques Cartier Junction and hauled a distance of 14.2 miles to the pier.

On the other hand, the Canadian National Railways have adequate facilities for the handling of live stock at their Montreal stock yards at Point St. Charles. Live stock arriving over the Canadian National Railways destined for Bickerdike pier has to be switched from Point St. Charles, a distance of 1.8 miles.

At the hearing the applicants confined their submissions to the switching service of the Canadian National Railways above set out in paragraph 3, and abandoned the other features of their application.

Cattle destined for export are shipped in the summer from Montreal and in winter from Saint John and Halifax. Dealing first with the shipment from Montreal: Cattle for export shipped from points on the Canadian National Railways west of Montreal are received at Turcot yards west of St. Henri, where the trains are broken up. Cars of cattle are switched to the Montreal stock yards to be fed and watered as required by the Government regulations. When the cattle are ready for shipment they are reloaded and forwarded over the Canadian National Railways to their connection with the Montreal Harbour Commissioners' Railway, at which point the cattle are handed over to the latter for delivery at the various wharves.

The Harbour Commissioners' charge of \$4 per car is included in the rate as published in rule 16 of Tariff E-55, C.R.C. E-1807.

When cars of cattle for export from Montreal are shipped from Canadian National Railway points to the applicants at Bickerdike pier they are switched from Turcot yard to Bickerdike pier and when delivered there the contract of carriage is complete. The Canadian National Railways have carried out their contract with the shipper and the transit is at an end. The cattle are in fact on a Montreal wharf from which they could be loaded on boats for export save for the difficulty experienced by the applicants in securing boats to call there.

There is this further distinction between the handling of export cattle in the stock yards of the railway company and the applicants' lairage. Export cattle are stopped off at the railway stock yards only for feeding, resting, and watering, or quarantine, as required by law, and are held there only a few hours, not exceeding forty-eight hours; the applicants, on the other hand, hold the cattle over in their lairage for several days (up to twenty or thirty days) in order, it is stated, that they may regain shrinkage in transit, or for fattening, also for assembling. In other words, the stopping off of live stock at applicants' lairage is not confined to the same purpose as at the railway stock yards.

The applicants now ask that the Canadian National Railways be ordered to switch cars free of charge from the Bickerdike pier back to Point St. Charles thence to the connection with the Harbour Commissioners' Railway, and pay the Harbour Commission its \$4 charge for carrying the cars to one of the wharves. There is no justification or reason whatever for requiring the Canadian National Railways to do this work for nothing, and in view of the evidence given their charge of \$6 is fair and reasonable. There is no ground for requiring them to absorb the Harbour Commissioners' switching charge.

Dealing again with the case of cattle for export from Saint John or Halifax: When cars of cattle are shipped over the Canadian National Railways for export from Saint John or Halifax the railway company is under no obligation whatever to deliver the cattle to the applicants or anybody else to be looked after and fed. To allow such cattle to be sent over to the Bickerdike pier is merely a

favour done the applicants by the Canadian National Railways. The Canadian National Railways make a charge for switching cattle into Bickerdike pier and back to Point St. Charles of \$10. Comparing this charge with other charges for switching in the Montreal yards, as well as upon consideration of the evidence showing what is involved in performing this service, I am of opinion that the charge is fair and reasonable.

The application is dismissed.

OTTAWA, February 7, 1933.

The Assistant Chief Commissioner and Commissioner Stone concurred.

After the hearing of the above matter the Harbour Commissioners of Montreal represented to the Board that they were interested and desired the Board to delay delivery of judgment until they could file submissions. The Board to-day received these submissions, which although covering six pages in reality only involve the following contentions:—

- (1) That the Board of Railway Commissioners has no jurisdiction over the railway tracks and lines of the Harbour Commissioners.
- (2) That the Board should dismiss the application in so far as it may affect any property, or the management or control thereof, of the Harbour Commissioners.

The Board finds no difficulty in dealing with these submissions for the very simple reason that the Board is not attempting in this matter to exercise any jurisdiction over the railway tracks and lines of the Harbour Commissioners, nor does the decision of the Board affect any property of the Harbour Commissioners, or the management or control thereof.

OTTAWA, February 22, 1933.

ORDER No. 49562

In the matter of the application of the Richelieu Corporation, of Montreal, for an Order establishing stop-off arrangement on live stock at its lairage on Bickerdike Pier, Montreal, when consigned to Saint John or Halifax for export; also that live stock originating on the Canadian National Railways' lines for export from Saint John and Halifax be handed over to the Canadian Pacific Railway at Montreal (file No. 6713.239);

And in the matter of the complaint of the said Richelieu Corporation against switching charges of the Canadian National Railways for the handling of live stock from Bickerdike Pier to any other pier in Montreal; also from Point St. Charles to Bickerdike Pier and return when the live stock is consigned to Halifax, Saint John, or Portland for export.

(File No. 38540)

WEDNESDAY, the 22nd day of February, A.D. 1933.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, January 24, 1933, in the presence of counsel for and representatives of the Richelieu Corporation, the Canadian National Railways, and the Canadian Pacific Railway Company, and what was alleged,—

It is ordered: That the application and complaint be, and they are hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Re automatic gate protection at the crossing of South Street, in the Village of Cowansville, Que., by the Canadian Pacific Railway.

Application of the Canadian Pacific Railway Company for reconsideration of Order of the Board No. 42648, dated May 20, 1929, so that the cost of the protection installed thereunder may be divided equally between the Canadian Pacific Railway Company and the said Village of Cowansville.

File 27156.113.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of April 12, 1928, the village of Cowansville, by its secretary, transmitted to the Board copy of a resolution bearing on the necessity for protection at South street. The resolution speaks of having a signalling system installed.

This was taken up with the Canadian Pacific Railway Company which intimated its willingness to participate in the cost of installation of bell and wigwag at the point in question, and suggested that the cost be divided 40 per cent out of the Railway Grade Crossing Fund, the balance of cost of installation and maintenance to be divided equally between the railway company and the municipality. The municipality, on being communicated with, took the position that the highway was senior and, therefore, no part of the cost should be placed upon it.

Following this, a draft order providing for bell and wigwag was prepared under date of October 9, 1928. The operative portion of the Order reads as follows:—

"It is ordered:

"1. That, within ninety days from the date of this Order, the Canadian Pacific Railway Company install an improved type of automatic bell and wigwag at the said crossing, in accordance with the 'Standard Specifications for Highway Crossing Signals,' approved by General Order No. 96; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board.

"2. That forty per cent of the cost of installing the said bell and wigwag be paid out of 'The Railway Grade Crossing Fund,' the remainder, together with the cost of maintenance, to be paid by the Railway Company."

This, however, did not issue, as an application came in from the municipality asking for the installation of the Farnsworth automatic gate. This gate had attracted attention for a number of years and trial installations were made at, among other places, St. Hubert, Que., Ayrness, Que., and Bromptonville, Que. The Ayrness gate, after a trial by the railway, was taken out. By Order No. 41902, of December 13, 1928, the Farnsworth automatic gate plans and specifications were approved as an effective form of protection at rail level highway crossings. This order was rescinded by Order No. 48225 of March 1, 1932.

The Farnsworth automatic gate appeared in 1928 still to be in an experimental stage and to require considerable testing before satisfactory conclusions would be arrived at. Its subsequent history shows that the Automatic Gate Company is no longer in existence. The gate which was installed at Bromptonville, on the request of the municipality, has, on the request of the municipality, also been removed. The installation at St. Hubert proved unsatisfactory and the gate has been removed.

The highway at Bromptonville is senior to the railway. On request of the municipality, Order No. 42719, of May 27, 1929, issued. This provided for installation of the Farnsworth automatic gate; 40 per cent to be paid from the Railway Grade Crossing Fund; the balance of the cost of installation, as well as maintenance charges, to be divided equally between the railway and the municipality.

When the municipality wrote in the first instance asking for the installation of the gate, it intimated its understanding that the division of cost would be—the Board (Grade Crossing Fund) one-third; the railway company, one-third; and Bromptonville, one-third. The division of cost set out in Order No. 42719 departs from what was suggested by the village of Bromptonville and is in substantial harmony with the practice which has been followed in other cases.

The order providing for installation of the Farnsworth automatic gate at Cowansville is No. 43453 and issued September 24, 1929. It provides for 40 per cent of the cost of installation being paid out of the Railway Grade Crossing Fund; the remainder of the cost of installation as well as cost of maintenance being borne and paid by the railway company.

There has been discussion of the senior and junior rule. Reliance has been placed upon the question of seniority as determining that the one so senior does not need to contribute. In this case, the highway is senior and the railway junior. It is to be recognized that in practice the senior and junior rule has been subject to exceptions—local conditions as to volume of traffic, whether the traffic on the highway is increasing more rapidly than the traffic on the railway. It has been held that the amount of traffic on the highway or railway, respectively, is a more important factor than the question of seniority. See *Municipalities of Ste. Anne de Bellevue and Senneville vs. G.T. & C.P. Ry. Cos.*, 16 *Can. Ry. Cas.*, 250; *City of Toronto vs. C.P.R. Co.—Symington Avenue Case*, 19 *Can. Ry. Cas.*, 293; *City of Montreal vs. G.T.R. Co.*, 22 *Can. Ry. Cas.*, 444; *City of Hamilton vs. Hamilton St. Ry. Co. and T.H. & B. Ry Co., Main St. Crossing Case*, 29 *Can. Ry. Cas.*, 184; *City of Brantford vs. C.N. Rys.*, 35 *Can. Ry. Cas.*, 155.

As pointed out, the municipality has relied on its admitted seniority. It was recognized in the steps leading up to the issuance of the order that the highway being a provincial one the province was interested in the movement of traffic thereon; but, at the same time, the Board recognized that it could not make a direction against the province, although the highway traffic concerned was, in many cases, relatively long distance traffic moving over a provincial highway. The inability of the Board to make the province a participant in cost left for consideration the municipality and the railway; and the position taken was that the municipality, in many cases, had not created the traffic and, therefore, should not be expected to take on the burden of this long distance traffic. This left only the railway to bear the burden. Exception was taken at the time to this method of division, because the railway had not created the traffic which was, to a great extent, competitive traffic taking the traffic away from the railway.

Unless there are special conditions taking the protective work out of the normal practice, the general arrangement is that there should be contribution from the parties. It is true that in the earlier days of electric warning bells and before wigwags were installed, no contribution was taken from the municipality. This was due to the fact that at that time the cost of the bells was very little. With increase in the cost of the bells and the addition of wigwags, the municipality was called upon for contribution. Other forms of protection—gates and grade separations—rely upon division of cost.

In the case of Bromptonville, as already pointed out, the highway was senior; but the Board saw fit to apportion cost, including the municipality as a party.

The Bromptonville order issued May 27, 1929; the Cowansville order issued September 24, 1929. In both cases, the highway was senior. Nothing was developed as to facts or situation which would seem to justify a different treatment in the Cowansville case in respect of division of cost from what was done in the Bromptonville case, as well as in other cases which were referred to in the course of the recent hearing.

The Farnsworth automatic gate at Cowansville cost \$6,563.07. This was much in excess of what was anticipated when the matter was first discussed. There is an informal statement on file that the Gate Company had offered to install the gate complete at from \$2,000 to \$2,500, according to the number of signals the gate would require. There is also another communication on file setting out that the installation of four gates on a single track would be \$3,400, while with four gates on a double track the price would be \$2,900. When temporary consideration was given, about 1925, to a trial installation at Magog, Que., the Dominion Automatic Gate Company quoted a price of approximately \$1,600 for a complete installation covering two gates.

Owing to the urgent request of the municipality, the railway was brought into paying for a device which exceeded in cost not only the bells and wigwags but, also, the estimate of cost supplied for the automatic gate. It was pointed out at the hearing that as a result of the Farnsworth Automatic Gate Company being no longer in existence, the railway could not obtain spare parts from this source and had to rely upon its own supply of materials.

While the gate is being continued in place, the railway does not claim that it is wholly satisfactory. Counsel for the municipality intimated there were difficulties in connection with the gate but, as presented by him, they were to a considerable extent matters arising out of operating conditions. The railway stated that the gate being in place, it could not make any other use of it aside from turning it into scrap; and it considered it better to continue with the protection than to scrap it.

As pointed out, the automatic gate was installed at Cowansville on the urgent request of the municipality. It cost much more than had been estimated. Further, if the alternative method of protection afforded by bell and wigwag had been made use of, the cost would have been still less, averaging from \$2,000 to \$2,300 for installation. Participation in this cost as proposed by the railway would have entailed a much lower burden than in the case of the automatic gate. The cost of maintenance would have been about \$200 per annum. There is not so much difference here. At the recent hearing, it was stated that, on the average, the gate at Cowansville requires for upkeep and maintenance about \$300 per annum.

I am of opinion that the application for reconsideration of Order No. 42648, of May 20, 1929, may be allowed. Contribution has already been made from the Grade Crossing Fund. The apportionment in respect of contribution is concerned with the balance after deducting contribution from the Grade Crossing Fund. The basis of distribution which was adopted in the Bromptonville case may, I think, with propriety, in view of what had been set out, be applied to the present case, with the result that the balance of cost of installation, after payment from the Grade Crossing Fund, and the cost of maintenance and operation should be divided equally between the railway and the municipality.

February 11, 1933.

The Deputy Chief Commissioner and Commissioner Norris concurred.

ORDER No. 49538

In the matter of the Order of the Board No. 43453, dated September 24, 1929, requiring the Canadian Pacific Railway Company to install a Farnsworth Automatic Gate at the crossing of South street, in the village of Cowansville, province of Quebec; and apportioning the cost of such installation as follows: forty per cent to be paid out of "The Railway Grade Crossing Fund", and the remainder of such cost, together with the cost of maintenance, to be borne and paid by the railway company;

And in the matter of the application of the Canadian Pacific Railway Company for reconsideration of the said Order No. 43453, so that the cost of the said protection may be divided equally between the company and the village of Cowansville.

File No. 27156.113

MONDAY, the 13th day of February, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*F. A. LABELLE, *Deputy Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, February 9, 1933, in the presence of counsel for the railway company and the village of Cowansville, and what was alleged,—

It is ordered: That the said Order No. 43453, dated September 24, 1929, be amended by striking out the words "by the railway company," at the end of the order, and substituting in lieu thereof the words "one-half by the railway company and one-half by the village of Cowansville."

S. J. McLEAN,

Assistant Chief Commissioner.

Application of the Municipality of the Parish of St. Bazile-le-Grand, in the County of Chambly, Que., that Order of the Board, No. 46925, dated June 26, 1931, be rescinded, and that the Canadian National Railways be ordered to file a certified copy of the duplicate in its possession of the Agreement entered into on or about the month of August, 1901, by the Grand Trunk Railway Company of Canada and the Corporation of the Parish of St. Bazile-le-Grand; that an Order be issued directing the Canadian National Railways not to remove its telegraph operator agent from the station at St. Bazile-le-Grand, in the County of Chambly, Que.; and that applicant be awarded its costs on this petition as against the Canadian National Railways should the same be contested.

File 4205.634

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of June 2, 1931, application was received from the Canadian National Railways, asking for permission to close, as an agency, the station at St. Bazile-le-Grand, at mileage 16.7 on the St. Hyacinthe subdivision, and to replace the agent with a caretaker. A statement of earnings was submitted covering the last three years, showing an average of less than \$10,000 for each of the years ending March 31. There is a station agency at St. Bruno, 3.1 miles east, and at Belœil, 3.8 miles west. The distances, it will be noted, are short.

Formal notification of what was involved was sent to the municipality, and after time had been allowed for further submissions Order No. 46925, of June 26, 1931, issued authorizing the railway to remove its agent, subject to and upon the condition that a caretaker should be appointed to see that the station building was kept clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to take care of less than carlot freight and express shipments.

No action was taken by the railway at the time. It is represented this was due to the continued representations to the railway officials made on behalf of the residents of the locality.

The municipality in asking for rescission of the order in question relies upon an agreement entered into between the municipality and the railway in August, 1901. (While copy of the agreement is on file, the specific date in August is not given.) This agreement recited that there was an agent at St. Bazile-le-Grand who was not a telegraph operator; that the municipality had asked the railway to appoint an agent who could also operate the telegraph, and it offered to pay the railway company the sum of \$325 if the company would make such appointment for one year. The municipality represented it was satisfied that the placing of an operator agent at the said station would result in an increase during the said year in the gross earnings of the company on its freight traffic "shipped from the said station on and by way of the railway of the company, to the extent of at least three hundred and twenty-five dollars over and above the gross earnings on its freight traffic shipped from the said station for the year ending May 31, 1901, which amounted to \$2,382".

It was further stated that if at the expiration of the year ending August 31, 1902, the gross earnings of the company on "its freight traffic shipped on and by way of its railway from the said station" has been increased to the extent of at least \$325 over and above the gross earnings on its freight shipped from the said station for the year ending May 31, 1901, which amounted to \$2,382, then the company was to continue the operator agent for one year.

It was further set out that if in any year ending August 31 (after the 31st day of August, 1903) the gross earning of the company on its freight traffic for that year shall have fallen short of the sum of \$2,707, being the gross earnings on the said traffic for the year ending May 31, 1901, with the addition thereto of the sum of \$325, the continuance of the said operator agent shall be entirely optional with the company.

Exhibit No. 1 filed by the railway shows the outward freight from St. Bazile-le-Grand, during the period September, 1931, to August, 1932, amounting to \$2,346.35.

In *Duthie vs. G.T.R. Co., 4 Can. Ry. Cas., 304*, the late Chief Commissioner Killam said at p. 311:—

"The Board is purely a creature of statute. The general principle applicable to such a body is that its jurisdiction is only such as the statute gives by its express terms or by necessary implication."

At p. 315, it was stated that the Board was not created to supplant or even to supplement the provincial courts in the exercise of their ordinary jurisdiction, but to exercise an entirely different jurisdiction.

The Board's jurisdiction in regard to enforcement of agreements is under section 35; and there the power of the Board is to make such order as to it may seem reasonable and expedient.

The earnings at this station from 1928 are as follows:—

April, 1928-March, 1929..	\$ 9,679 31
April, 1929-March, 1930..	11,371 86
April, 1930-March, 1931..	9,685 02
April, 1931-March, 1932..	7,426 27
April, 1932-December, 1932..	5,324 00
January, 1932-December, 1932..	6,969 00

The practice of the Board has been to recognize that when station earnings fall below \$15,000 per annum there is justification for considering a change in the service. In general, when this has been done, it has been by allowing a caretaker to be put in place of a regular agent. It is matter of regret that conditions which necessitate the reduction in station service in the present instance are so general; yet, in the presence of necessity for economies, the Board cannot do otherwise than it has done in many cases. The general conditions of traffic and the earnings therefrom, as well as the limited earnings at the point in question, are such that considering the whole situation it would not be "reasonable or expedient" to make an Order directing the rescission of Order No. 46925 as requested.

The subject-matter herein concerned falls within the reasoning of the recent decision of the Chief Commissioner in—

Complaint of the Deputy Minister of Justice, on behalf of the Dominion Government against the Ottawa Electric Railway Company for breach of a certain agreement between the Crown and the Company dated 25th September, 1908, for the operation of an Electric Tram Car service over the Electric Railway on the Dominion Experimental Farm, and for an Order directing the Company to renew and continue the service; and for the imposition of a charge of not less than \$25 for each day of the company's default.

Board's Orders and Judgments, Vol. 21, p. 399.

The application will be dismissed.

February 13, 1933.

The Deputy Chief Commissioner and Commissioner Norris concurred.

ORDER No. 49550

In the matter of the Order of the Board No. 46925, dated June 26, 1931, permitting the Canadian National Railways to remove their agent at St. Bazile le Grand Station, in the Province of Quebec, subject to the condition that a caretaker be appointed;

And in the matter of the application of the Municipality of the Parish of St. Bazile le Grand for an Order rescinding the said Order No. 46925 and directing the Canadian National Railways to file a certified copy of the duplicate in its possession of the Agreement entered into in or about the month of August, 1901, by the Grand Trunk Railway Company of Canada and the said Parish.

File No. 4205.634

WEDNESDAY, the 15th day of February, A.D. 1933.

S. J. McLEAN, Asst. Chief Commissioner.

F. A. LABELLE, Deputy Chief Commissioner.

Hon. T. C. NORRIS, Commissioner.

Upon hearing the application at the sittings of the Board held in Ottawa, February 10, 1933, in the presence of Counsel for the Municipality of the Parish of St. Bazile le Grand and the Railway Company, and what was alleged—

It is ordered that the application be, and it is hereby, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 49524

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for approval of its Automobile Contract Ticket, on file with the Board under file No. 38460.

THURSDAY, the 9th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is prepared to carry automobiles in baggage car service between Revelstoke, British Columbia, and Golden, British Columbia, at reduced rates upon the execution of a release limiting liability, and that the conditions of such release are reasonable,—

It is ordered: That the form of Automobile Contract Ticket of the applicant company, attached hereto, marked "A", be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49530

In the matter of the consideration of the question of the apportionment of the cost of constructing and maintaining interchange tracks between the Canadian Pacific and the Canadian National Railways at Prince Albert, Saskatchewan, which the Canadian Pacific Railway Company was directed to construct under Order No. 45835, dated November 26, 1930.

File No. 6713.234

FRIDAY, the 10th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Prince Albert, October 6, 1931, in the presence of counsel for the railway companies, and what was alleged; and upon reading the statements filed by both companies showing the number of cars handled by each over the said interchange tracks during the period of one year, and the further submissions filed; and upon the report and recommendation of the Assistant Chief Traffic Officer and the Chief Engineer of the Board,—

It is ordered: That the cost of constructing and maintaining the said interchange tracks at Prince Albert, Saskatchewan, be borne and paid as follows, namely, five per cent to be paid by the Canadian National Railways and the remainder by the Canadian Pacific Railway Company.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49539

In the matter of the application of the North American Telegraph Company, under Section 323 of the Railway Act, for approval of By-law No. 14 (amended), dated February 11, 1933, authorizing the General Manager of the company from time to time to prepare and issue tariffs of rates for all local telegraph messages to be charged by the company for messages transmitted over the lines of the company, the said by-law being on file with the Board under Case No. 634.

WEDNESDAY, the 15th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said by-law No. 14 (amended), dated February 11, 1933, be, and it is hereby, approved.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 49548

In the matter of tariffs of the tolls to be charged by the Detroit & Canada Tunnel Company.

File No. 35943.4.

THURSDAY, the 16th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Upon reading the Order of the Federal Court of the Eastern District, Southern Division, of the State of Michigan, which appoints George R. Cooke, Receiver of the Detroit and Canada Tunnel Company, and authorizes him to establish and publish rates and charges for the use of the company's vehicular tunnel by motor vehicles, and rates and charges for the carriage of passengers through said vehicular tunnel.

It is ordered that the said George R. Cooke, Receiver of the Detroit & Canada Tunnel Company, be, and he is hereby, authorized from time to time to prepare and issue tariffs of the tolls to be charged for the use of the company's vehicular tunnel, and to specify the persons to whom, the place where, and the manner in which, such tolls shall be paid.

C. P. FULLERTON,

Chief Commissioner.

ORDER No. 49555

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariff C.R.C. No. 14, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

FRIDAY, the 17th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Tariff C.R.C. No. 14, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49557

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 17th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 19 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 19 to Tariff C.R.C. No. E-4322, approved herein, are as follows:—

To	Rates in cents per 100 pounds from the following groups:									
	A	B	C	D	E	F	G	J	K	L
Cheminis, Ont.	38½	38½	38	35½	35½	35½	35½	39½	39½	41
Trout Mills, Ont.	34	34	33½	31	31	31	31	35	35	36½
to Osborne, Ont.										
Diver, Ont.	35	35	34½	32	32	32	32	36	36	37½
to Timagami, Ont.										
Goward, Ont.	36	36	35½	33	33	33	33	37	37	38½
to New Liskeard, Ont.										
Uno Park, Ont.	36½	36½	36	33½	33½	33½	33½	37½	37½	39
to Wawbewawa, Ont.										
Krugersdorf, Ont.	37½	37½	37	34½	34½	34½	34½	38½	38½	40
to Bourkes, Ont.										
Yorkston, Ont.	38½	38½	38	35½	35½	35½	35½	39½	39½	41
to Monteith, Ont.										
Kelso, Ont.	39½	39½	39	36½	36½	36½	36½	40½	40½	42
to Cochrane, Ont.										
McCool, Ont.	36½	36½	36	33½	33½	33½	33½	37½	37½	39
to Osseo, Ont.										
Onagon, Ont.	39½	39½	39	36½	36½	36½	36½	40½	40½	42
to Iroquois Falls, Ont.										
to Kilburn, Ont.	40½	40½	40	37½	37½	37½	37½	41½	41½	43
to Timmins, Ont.										
Larocque, Ont.	41½	41½	41	38½	38½	38½	38½	42½	42½	44
to Island Falls Jct., Ont.										
Homuth, Ont.	37½	37½	37	34½	34½	34½	34½	38½	38½	40
to Coral Rapids, Ont.										
Mountain Chute, Ont.	37½	37½	37	34½	34½	34½	34½	38½	38½	40
to Elk Lake, Ont.										

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 509

In the matter of the General Orders of the Board Nos. 159 and 506, dated respectively February 18, 1916, and December 3, 1932, amending Rule 93 of the train rules, designated as the "Uniform Code for Canadian Railways," approved by General Order No. 42, dated July 12, 1909.

File No. 4135.21

MONDAY, the 6th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

F. A. LABELLE, *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the Canadian Pacific and the Canadian National Railway Companies, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered:

1. That rule 93 of the train rules, designated as the "Uniform Code for Canadian Railways," approved by the said General Order No. 42, be amended by adding thereto the following:—

"By night, or in foggy or stormy weather, a red light must be placed on unattended cars or dead engines obstructing main tracks within yard limits."

2. That General Orders Nos. 159 and 506, dated respectively February 18, 1916, and December 3, 1932, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner,

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Re Grade Separation at Hamilton, Ont.—Joint application of the Toronto, Hamilton and Buffalo Railway Company and the City of Hamilton for the apportionment of the cost of the works between the applicants and all other parties that may be benefited by, or interested in, the carrying out of the said works, and the contribution to be made out of the Railway Grade Crossing Fund, reserved by paragraph 10 of Order No. 45813, dated November 14, 1930.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

I

The agreement of October 20, 1930, between the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the railway company, and the city of Hamilton recites that the city has requested the railway company to proceed with grade separation in the city of Hamilton from a point at or near the tunnel to a point east of Victoria avenue, which will necessitate the removal of certain of the railway company's tracks, structures, buildings, facilities and works from their present location, as provided for in the by-law of 1894, and the replacement thereof as therein proposed. The reference to the by-law is concerned with the agreed-on location of the railway company at the date it came into Hamilton.

The works covered by the agreement and authorized by Order No. 45813, dated November 14, 1930, included the removal of the railway company's tracks from Hunter street and their relocation south of the said street; the elevation of the said tracks and works incidental thereto between the tunnel and Victoria street; the elevation of the Canadian National Railway track, Port Dover Branch, where it paralleled and crossed the said railway company's tracks between Ferguson avenue and a point east of Victoria avenue; the construction of six subways for general purposes, of which two take care of the tracks of both railways; the construction of two pedestrian subways; the closing of seven



crossings, and the separation of grades of the railway company and Hamilton Street Railway tracks by carrying the latter through the James street subway. In addition to those already mentioned in the carrying out of the works, the following are affected:—the Bell Telephone Company, the Hydro-Electric Commission of Hamilton, United Gas and Fuel Company, and the Manufacturers Natural Gas Company Limited.

It is stated in the agreement that the works “hereinafter set forth comprised in and connected with grade separation are of mutual benefit to the city and to the railway company.”

Reference is made to Plan No. 2-B.R.C., which shows the general features of the proposed construction work; and it is stated that the parties will join in an application to the Board for the approval of the works in question, and for an order authorizing and directing and ordering the construction of the same, and for the taking of additional lands without the consent of the owners, under the provisions of the Railway Act.

It is also agreed that the apportionment of the cost to be determined by the Board, in so far as the city and the railway company are concerned, shall be limited to the cost of replacing all existing facilities of the railway company or the equivalent thereof, and of all works incidental thereto. It is agreed, however, that any contribution the Board may order to be paid out of the Railway Grade Crossing Fund in respect of additional facilities (the cost of which shall be paid for entirely by the railway company) is to be wholly payable to the railway company; but the provisions in respect of the division of cost shall be subject to the approval of the Board, to vary as it may deem fair and equitable. The city is to pay to the railway company the proportion of the cost placed on the city by the Board, in monthly payments as the work proceeds. Similarly, the railway company is to pay to the city its proportion of expenditures made by the city in connection with and properly chargeable to said works.

All matters relating to the works to be performed by the city and the railway company respectively, the maintenance and repairs thereof after construction, the liability of the parties as between themselves and to the public, taxes and other matters arising in the carrying out of the works shall be referred to the Board for settlement, in case the parties cannot agree. Provision is made for arbitration in cases where the Board declines to act.

II

The railway company contends that the city will have advantages, e.g., streets will be clear at all times for movement of traffic, including fire apparatus, ambulances, and other emergency traffic, as well as the elimination of delays; the sum total of which will result in safety and convenience to the citizens at large.

It is admitted by the railway company that there will be improved operation of passenger, freight and switching movements through the city on account of the absence of grade crossings between the tunnel and a point east of Victoria avenue, since the limitation of ten miles an hour will be permitted to be lifted between these points. Further, the necessity of cutting long freight trains when stopped on account of breaks in the train line will be removed. The railway company claims, however, that such stoppage has been infrequent in the past. The elimination of gates and watchmen will effect a saving to the railway company amounting to \$23,637 per annum, which includes operation and maintenance. It is admitted, further, that safety of operation will be increased on account of elimination of emergency stops to prevent collisions with vehicles and pedestrians on the highway, thus affording greater comfort and safety to the travelling public.

The railway company sets out that, subsequent to the issuance of Order No. 45813, of November 14, 1930, and with the approval of the city, certain other changes east of James street were made, and accordingly a new plan—No. 3-B.R.C.—was prepared, which was filed with and approved by the Board under Order No. 46930, of June 26, 1931. These changes, it is stated by the railway company, created additional expense in the section east of James street amounting to \$197,871.46. It claims that this total amount represents benefits accruing to the city on account of construction. Over against this, it sets an item of \$26,000, made up of the difference in the cost of standard 105-pound rails used for main tracks as against 80-pound rails, which was the original rail in the tracks prior to grade separation, \$23,000; and increased cost of providing link chain fences instead of standard right of way fences to ensure against trespassers and accidents, represented by the differential, \$3,000.

It is claimed that the Hamilton Street Railway will benefit by the James street subway; and that the Canadian National Railways will also be benefited by the elimination of grade crossings.

III

The following summarizes the disposition which the railway company claims should be made:—

- “(a) That under all the circumstances the costs under said agreement should be apportioned between the city and the T.H. & B. on a fifty-fifty basis, after deducting 40 per cent out of the Railway Grade Crossing Fund.
- “(b) That the Street Railway should pay 10 per cent of the cost of the James street subway (including maintenance of the bridge structure) and related work.
- “(c) That the Canadian National work should be divided on a fifty-fifty basis between the Canadian National and the city, after deducting 40 per cent out of the Railway Grade Crossing Fund.
- “(d) That if the Railway Board is unable to order the contribution out of the Railway Grade Crossing Fund at the present time, that the parties assume the Board's proportion in the meantime and the sum or sums eventually ordered to be paid out of the fund be disbursed to the contributing parties in proportion to the contribution paid by the parties.
- “(e) That the public utilities assume the cost of making the necessary changes in their plant and equipment.
- “(f) That the T.H. & B. and C.N.R. maintain all structures which each of the said companies use for the support of tracks and roadbed.
- “(g) That the city maintain and repair all pavements, sewers, curbs, water-mains, manholes, steps, handrails, and structures other than railway structures located on city streets but including the interior of the Ferguson avenue and McNab street pedestrian subways, used by it or otherwise not used by the railways for the support of their tracks and roadbed.
- “(h) That the city assume the cost of maintenance and operation of street lighting in the subways.
- “(i) That in the adjustment of all accounts interest at the rate of six per cent per annum be allowed from the date of expenditure to the date of payment.”

IV

The city of Hamilton points out in its written submission that paragraph 3 of the agreement of October 20, 1930, provided that the matter of apportion-

ment of cost of the works, including the cost of all lands used for the works and all compensation, etc., awarded to the owners of said lands and adjoining properties by reason of the construction of the works shall be assumed, borne and paid for in accordance with the order of the Board following hearing of the parties.

The city points out that the railway company realized the inadequacy of its facilities at least as far back as 1909, and began to acquire properties in that year looking to some solution of the difficulties in the form of grade separations. It is recited that from 1909 to 1912 the railway company purchased twenty-seven properties; that from 1913 to 1918 it purchased twenty-two additional properties; and that following the first order of the Board it purchased a further twenty-two properties. In other words, two-thirds of the properties now being used in whole or in part, being Plan No. 3-B.R.C., were acquired from 1909 to 1918; and it is submitted that this shows beyond doubt that it was the objective of the railway company officials to safeguard their congested, and costly operating conditions over an area of a mile and a half, and to provide for increased terminal facilities.

Reference is made to the fact that before grade separation was taken up, there was crossing protection by gates, watchmen, or wigwags at Charles, McNab, James, Hughson, John, Catharine, Baillie and Walnut streets, and at Ferguson avenue and Wellington street.

The total cost of this to the railway company and to the Canadian National Railways was stated to be \$24,849.58 per annum, which capitalized at 5 per cent amounts to \$496,991.60. It is stated that under this plan all of this expense is entirely eliminated.

V

The city summarizes its position as follows:—

- "1. That the street railway be asked to contribute 10 per cent of the cost of the James street subway;
- "2. That all public utilities pay their own costs of alterations;
- "3. That the Canadian National Railways be asked to contribute to the cost of the subways at Wellington street and Victoria avenue and necessary alterations to their tracks;
- "4. That contribution be made from the Railway Grade Crossing Fund from the amount which may be paid to this fund for the relief of unemployment or otherwise in the amount of 40 per cent of the cost of the work based on a cost not to exceed \$100,000 for any one subway for both vehicular and pedestrian traffic and in such further amount as the Board may fix in respect of the pedestrian subways at McNab street and Ferguson avenue;
- "5. That the city contribute one-third and the railway two-thirds of the remainder of the cost based upon a hypothetical plan to be agreed upon by the railway and the city, or, in the event of disagreement, to be decided upon by the Chief Engineer of the Board;
- "6. That the cost of the properties acquired and used on the basis of the hypothetical plan to be agreed upon or to be decided upon by the Chief Engineer be determined on the basis provided for in paragraph 3 of the agreement, and that as to any properties acquired of which only a part is used, the moneys derived from resale be credited to the cost of the work in accordance with the proportion of cost to be fixed by the Board."

VI

Paragraph 3 of the agreement refers *inter alia* to "the cost of all lands used for such works. . . ." The railway company states that lands have been acquired in anticipation of the movement for grade separation developing. It may be noted that the question of grade separation has engaged the attention of the city as far back as the year 1914.

Since 1909, the railway company has been acquiring lands. It claims that if it had waited until present days the expense of acquisition might have been very much higher. In some cases, it has earned rentals from the lands and proposes to turn so much of the land as is necessary into the work at cost, less rentals, plus interest and taxes. The interest it proposes to charge is 6 per cent.

The city has proposed that the value of the railway company's lands should now be worked out by arbitration. As already pointed out, the agreement specifically provides that the *cost* of all lands used for such works shall be included in the costs of the said works. Where there has been a user by the railway company of any such land, credit should be given for the same and an accounting therefor made. I think, however, that the rate of interest should be reduced from 6 per cent to 5 per cent.

The city is not interested financially in the construction of the railway station. It is, as a part of the work for grade separation, interested in the new elevated construction of the railway company. Not all of this construction, however, is of interest to the city, because part of it is concerned with betterments which are properly chargeable to the railway company.

Prior to the grade separation, the railway company was operating on two tracks. The measure of the city's interest will be found in the cost of supplying the railway company with a two-track right of way, sidings connected therewith, and other incidental expenses which are necessary to put this portion of the track in as good a position as it was before. Anything over and above this is in the nature of a betterment.

The evidence and argument submitted by the city tended to minimize the advantages to be obtained by grade separation. Time might be taken to analyze the submissions in this regard made by the city and, in rejoinder, by the railway company. It is, however, sufficient to say that the application for grade separation, coupling with it railway improvements, came from the city. Further, the agreement specifically states that the work is of mutual advantage.

The proposals as to the basis of distribution of cost have been set out. Both parties rely upon the experience in connection with various grade separations in the city of Toronto. The railway company in proposing equal division, refers to the Northwest Toronto Grade Separation where such division was made after other costs had been met. On the other hand, the North Toronto Grade Separation divided costs on the basis of 25 per cent on the city and 75 per cent on the Canadian Pacific Railway Company. In the Toronto Grade Separation, Part I, through Parkdale, the division was $33\frac{1}{3}$ per cent by the city and $66\frac{2}{3}$ per cent by the Grand Trunk; the Toronto Grade Separation, Part II, divided the cost 30 per cent on the city and 70 per cent on the railways.

As to the Toronto Grade Separation, Parts I and II, where the distribution was $33\frac{1}{3}$ per cent and 30 per cent from the city and $66\frac{2}{3}$ per cent and 70 per cent from the railway, they were in much the same position as the railway company's grade separation in Hamilton with respect to street crossings, in that a number of crossings were closed. However, in the distribution of cost, it was agreed that instead of stripping the work of additional facilities provided for the railway and apportioning the remainder between the city and the railway, to bulk it all together and apportion it as above mentioned, thus lessening the city's share and increasing that of the railway.

The cases cited by Mr. Tilley, counsel for the railway company, in support of the equal division of costs were of individual grade separations, such as Bloor street and Royce avenue subways in Toronto. At these places, both parties gained approximately equal advantages and neither gave up anything.

VII

The diversity of the figures set out attracts attention to the fact that these works were dealt with on particular facts; and unless one was sure that the facts in both cases were on all fours there would be no necessary justification for identity in proportion of cost.

One factor which must be given weight in the case of the city of Hamilton is that fifteen streets were crossed by the railway company. The city closed seven of these to all traffic and two to vehicular traffic. At the other six streets subways were constructed. If the railway company had given up one-half its tracks across the streets, the argument for equality of division would be stronger; but, on the contrary, the railway company added to its facilities across the streets. It is true, it paid for these, but it had given up nothing, while the city has given up a number of crossings.

From the tunnel portal to Victoria avenue is a distance of 4,630 feet. Included in this were the following fifteen crossings: Charles, McNab, James, Hughson, John, Catharine, Baillie, Walnut, Augusta, Ferguson, Liberty, Aurora, Young, Wellington, and Victoria. Liberty and Aurora are short streets which run into Young street from the north between Ferguson avenue and Wellington street. Both were formerly open to traffic; they have been closed, a connecting street having been supplied to connect them on the north side of the track. The minimum distance between subways will be found between John and Catharine, which are 370 feet apart; the maximum distance between subways is between Young street and Victoria avenue, which are 1,030 feet apart.

VIII

The railway company has been pressing for a decision setting out the division of cost.

Public Utilities.—The United Gas and Fuel Company, the Hydro-Electric Commission of Hamilton, the Bell Telephone Company of Canada, and the Manufacturers' Natural Gas Company, Limited: The above-named public utility companies shall themselves bear the cost of the removal of their respective facilities in so far as such removal is necessary for the replacement of tracks existing prior to the construction of the grade separations. As to the balance of costs incurred by the said utility companies in consequence of additional facilities provided by the railway company for its own use, the same shall be paid by the railway company. *C.N.R. vs. Quebec City, 40 Can. Ry. Cas., 51, at p. 56.*

Street Railway Company.—In connection with the James street subway, I am of opinion that the Hamilton Street Railway Company should be assessed 10 per cent of the cost of a subway sufficient to accommodate two tracks of the railway company. The cost of the maintenance to be borne in the same proportion as the cost of the work.

Canadian National Railways.—As to the proportion to be paid by the Canadian National Railways, it appears that this branch is not important and that the traffic is light. At the hearing, Mr. Piggott, Superintendent of the

Canadian National, stated that in 1930 there were eight regular train and two transfer movements over the line daily, and in 1932 the movements were 40 per cent lighter. It is reasonably certain that the situation existing at the Canadian National tracks would not have justified grade separation at the present time; and such conditions as would justify such a work in the near future are not in sight.

The time bill of the railway company shows that it had fifteen passenger trains daily passing over the line in 1930 and thirteen daily in 1932. The movements of the Canadian National over its line were branch line movements, limited in number, slow and relatively unimportant. The movements of the railway company are main line movements, more numerous but subject, however, to speed restriction.

It appears from the plan of grade separation that the Canadian National Railway is interested in the crossings at Young, Liberty, Aurora, Wellington streets and Victoria avenue; of these Liberty, Aurora, and Wellington have been closed, while subways were constructed at Young street and Victoria avenue.

I would place on the Canadian National Railways 10 per cent of the cost of the works in connection with grade separations at Young street and Victoria avenue, and the closing of Liberty, Aurora, and Wellington streets.

I am of opinion that the costs of the works for which the railway company and the city are jointly liable should be apportioned 60 per cent to the railway company and 40 per cent to the city.

IX

The works are concerned with protection, safety and convenience of the public.

Reference has been made to the question of seniority and juniority. In the present instance, it seems to me that the language in *re Distribution of cost of Northwest Grade Separation, Toronto, Board's Judgments and Orders, Vol. 16, p. 213, is pertinent:—*

“In a public work of this nature, we should not have our hands tied by the senior and junior rule; and that the situation at a particular crossing should not be regarded by itself, but that the matter should be looked at from the standpoint of the whole work.”

See, also, *North Toronto Grade Separation, Board's Judgments and Orders, Vol. 4, p. 356.*

The applicants are to undertake the adjustment and settlement of the costs of the lands and damages arising out of the work concerned; the expense so incurred to be adjusted in the final settlement. Any dispute arising in respect of the construction or cost of the work is to be determined by an Engineer of the Board.

February 20, 1933.

The Chief Commissioner and Commissioner Norris concurred.

ORDER No. 49585

In the matter of the Order of the Board No. 45813, dated November 14, 1930, as amended by Order No. 46930, dated June 26, 1931, approving and authorizing certain works of the Toronto, Hamilton and Buffalo Railway Company in connection with grade separation in the City of Hamilton, Province of Ontario; and reserving for further consideration the apportionment of the cost of such works between the Toronto, Hamilton and Buffalo Railway Company, the City of Hamilton, and all other parties interested, and the contribution to be made out of "The Railway Grade Crossing Fund";

And in the matter of the joint application of the Toronto, Hamilton and Buffalo Railway Company and the City of Hamilton for an Order apportioning the said cost.

File No. 20161

FRIDAY, the 24th day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, January 20, 1933, in the presence of counsel for and representatives of the Canadian National Railways, the Bell Telephone Company of Canada, the Hamilton Street Railway Company, the Toronto, Hamilton and Buffalo Railway Company, and the City of Hamilton, and what was alleged; and upon reading the further written submissions filed,—

It is ordered:

1. That the United Gas and Fuel Company of Hamilton, Limited; the Hamilton Hydro-Electric System; the Manufacturers' Natural Gas Company, Limited; and the Bell Telephone Company of Canada each bear and pay the cost of the removal of their respective facilities, in so far as such removal was made necessary by alterations to railway tracks in existence prior to the separation of grades in the city of Hamilton authorized under the said Order No. 45813, dated November 14, 1930, as amended by Order No. 46930, dated June 26, 1931; and that the remainder of the cost incurred by the said public utility companies in consequence of additional facilities provided by the railway company for its own use be borne and paid by the Toronto, Hamilton and Buffalo Railway Company.

2. That the Hamilton Street Railway Company bear and pay 10 per cent of the cost of constructing and maintaining a subway at James street, Hamilton, sufficient to accommodate two tracks.

3. That the Canadian National Railways bear and pay 10 per cent of the cost of the works in connection with grade separation at Young street and Victoria avenue and the closing of Aurora, Liberty, and Wellington streets, Hamilton.

4. That the cost of the works for which the Toronto, Hamilton and Buffalo Railway Company and the city of Hamilton are jointly liable be apportioned 60 per cent to the railway company and 40 per cent to the city.

5. That the Toronto, Hamilton and Buffalo Railway Company and the city of Hamilton settle between themselves, in the final adjustment, the apportionment of the cost of the lands and damages arising out of the work concerned; and that any dispute arising in connection with the cost of the work be referred to an Engineer of the Board to be determined.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49567

In the matter of the application of the International Railway Company, hereinafter called the "Applicant Company," for approval of Tariff C.R.C. No. 4, covering tolls to be charged in respect of the Falls View Bridge and the Queenston-Lewiston Bridge over Niagara Falls, on file with the Board under file No. 36795.7.

THURSDAY, the 23rd day of February, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Tariff C.R.C. No. 4 of the applicant company, covering tolls to be charged in respect of the Falls View bridge and the Queenston-Lewiston bridge over Niagara Falls, on file with the Board under file No. 36795.7, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49592

In the matter of the application of the Vancouver Harbour Commissioners, hereinafter called the "Applicants," under Section 323 of the Railway Act, for approval of their by-law, dated February 21, 1933, authorizing W. J. Enwright, Acting Secretary, to prepare and issue tariffs of the tolls to be charged for all freight traffic carried by the railway.

File No. 30281.3

THURSDAY, the 2nd day of March, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered:

1. That the applicants' said by-law, dated February 21, 1933, authorizing W. J. Enwright, Acting Secretary, to prepare and issue tariffs of the tolls to be charged for all freight traffic carried by the railway, on file with the Board under file No. 30281.3, be, and it is hereby, approved.

2. That Order No. 34298, dated October 11, 1923, made herein, be rescinded.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 510

In the matter of the General Order of the Board No. 330, dated February 16, 1921, as amended by General Order No. 416, dated May 14, 1925, prescribing the regulations regarding inspection of railway steam boilers, other than locomotive boilers, of railway companies subject to the jurisdiction of the Board.

File No. 29110.1

THURSDAY, the 2nd day of March, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That, pending further investigation and study, the said General Order No. 330, dated February 16, 1921, as amended by General Order No. 416, dated May 14, 1925, be, and it is hereby, further amended by adding at the end thereof the following regulations regarding steam heat or steam power lines, which shall apply forthwith, namely:— •

XX

“The Chief Mechanical Officer of the railway will be held responsible for the operation and inspection of all steam heat and steam power lines from where the same are connected to the boilers to the end of the lines, or/and to and including the point at which steam is delivered to any hotel, other building, or plant not immediately connected with the railway station, office buildings, shops, or other works.

“The operator in charge of each plant, and every assistant must be a qualified and competent steam boiler man.

“The maximum steam pressure to be carried in any pipe line shall be determined by the Chief Mechanical Officer using the recognized formulae for determining such safe working pressure.

INSPECTION

XXI

“Before being placed in service, and not less than once each twelve months thereafter, each pipe line and the appurtenances, including expansion joints, bi-pass, reducing valves, and other exposed parts, must be thoroughly inspected, and any leaks or other defects disclosed by such inspection must be repaired before being returned to service.

OPERATION

XXII

“The charging of pipe lines, after a period of close-down or in changing the pressure from one line to another, must be under the direct supervision of the mechanical officer in charge of the plant.

“All drains, drips, and valves throughout the system must be open to their fullest extent and the pressure built up gradually. None of the valves must be closed until all condensate has been allowed to drain out of the pipes.

INSTRUCTIONS

XXIII

“Careful instructions governing the operation must be issued to all members of the staff concerned, and renewed from time to time.”

C. P. FULLERTON,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF
DECEMBER, 1932

Railway accidents	139, with 13 persons killed and 132 injured.		
Railway accidents at highway crossings	20, with 9 persons killed and 18 injured.		
	159	22	150
		Killed	Injured
Passengers	—	—	14
Employees	3	3	102
Others	19	19	34
	22	22	150

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of
Accidents

NOVA SCOTIA

- 2 Automobile—N.S. licences 73-745, 52-664.

NEW BRUNSWICK

- 1 Automobile—N.B. licence CF-1015.
1 Pedestrian.

QUEBEC

- 2 Automobile—Failed to stop for crossing. Que. licences 79388, 73005.
1 Pedestrian—Crawled under gates in lowered position.

ONTARIO

- 6 Automobile—Ran into side of train. Ont. licences NR-900, HX-215, RR-541,
48-628C, 26718C; N.Y. SD-6627.
1 Automobile—Stalled on crossing. (Licence number not obtained.)
1 Automobile—Ont. ES-787.
3 Horse-drawn vehicles.

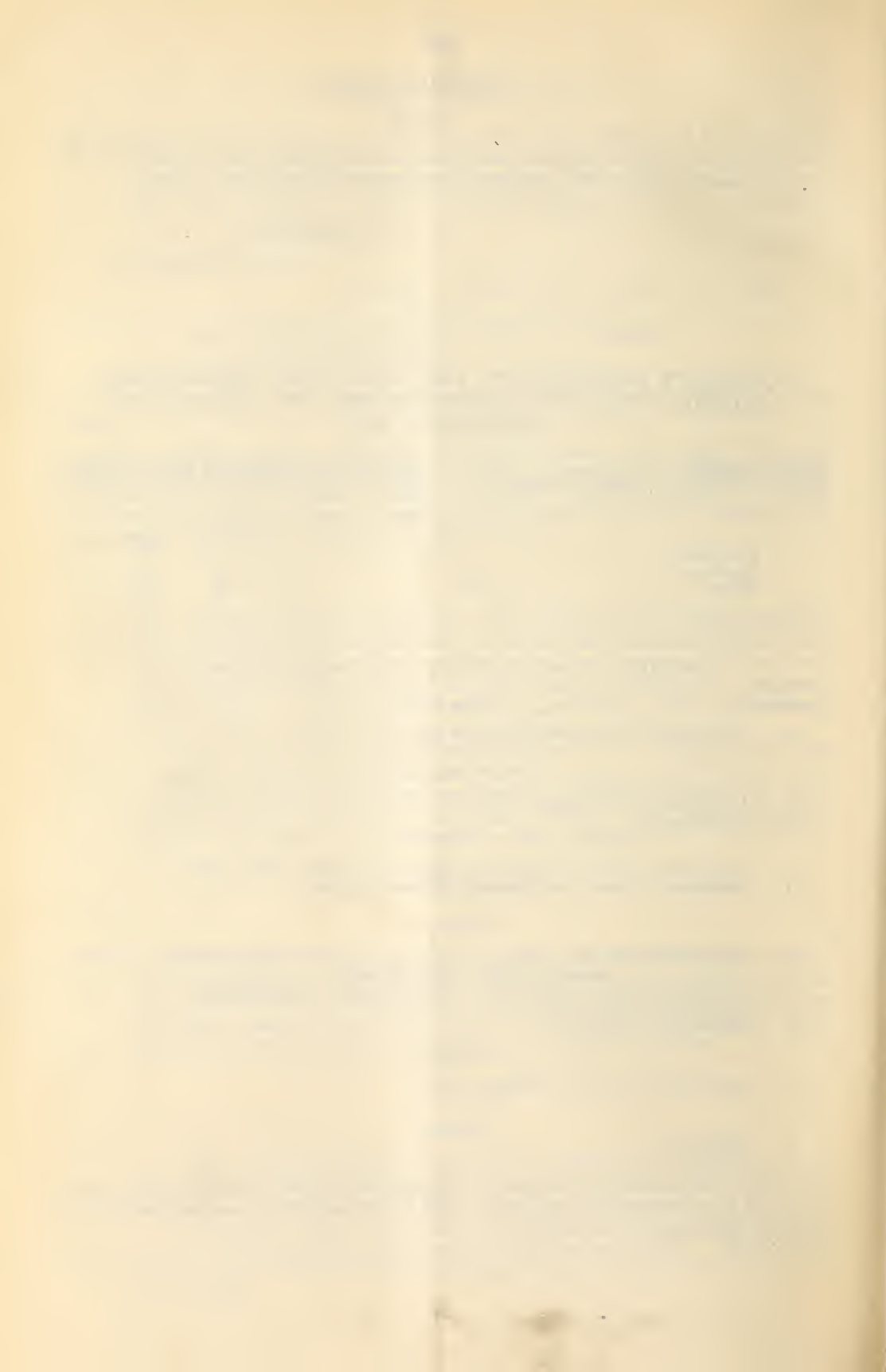
MANITOBA

- 1 Automobile—Man. licence 7-916.

ALBERTA

- 1 Pedestrian.

Of the 20 accidents at highway crossings, 16 occurred at unprotected crossings and four at protected crossings. Ten of the accidents occurred during the daylight hours and 10 at night.





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Canada. Transport Commissioners for Canada,
Board of

Judgments, Orders, Regulations and Rulings.
Vol.21-22 (April 1,1931-Mar.15,1933)

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